August Klapprott

Born: 4 September 1906, Broehthausen, Germany
Died: 31 March 2003, Myrtle Beach, Horry County, South Carolina
Buried: Ridgefield Cemetery, Bergen County, New Jersey,

Married: Hedwig Goeckler

One known child: Siglinda Klapprott.

August Klapprott arrived the United States in September 1927 and became a naturalized American in 1934. When he first arrived in America he worked as a bricklayer. He was a member of *the Friends of New Germany* before it combined with the *Friends of Germany* to form the *German American Bund* in 1936. The following year, August became the district leader for Hudson County, New Jersey chapter of the *Bund* and was appointed trustee of the *Bund Auxiliary* for Camp Nordland in Andover Township, Sussex County, New Jersey. Camp Nordland spread over 200 acres had separate boys and girls camps and a very successful restaurant which he ran from 1937 to 1940. The grounds functioned as a parade-ground for the Nazi-wanabees on the weekends when hundreds would parade around in Nazi drag and salute the American flag with the Hitler outstretched arm. These rallies were so large, the restaurant served up to 5,000 Nazi sympathizers on weekend days. Local residents were insulted by their presence and managed to have the liquor license not renewed in 1939 – a killer for beer-loving Germans. The NJ State Legislature enacted a la banning all military style outfits in public, performing any routines that resembled the drilling of military recruits, and banned the display of the swastika with a fine of up to $5,000.00 for each violation of the law. In January 1940 August became a full-time, salaried employee of the *Bund* when he was appointed deputy leader. He also assumed the position of editor for their weekly newspaper *Deutscher Weckruf und Beobachter* whose 1937 circulation had reached 20,000. A youth magazine aimed at indoctrinating boys and girls in the Nazi ideals of the supremacy of their mythical Aryan race and the need to kill all Jews and enslave all others was launched around 1937 and he became editor of that as well. The December 14, 1937 edition of the paper carried a new name: *The Free American and Deutscher Weckruf und Beobachter*. After the attack on Pearl Harbor, there was just one more issue published, on December 11, 1941. The cessation of publishing endeavors was accompanied by the folding of the *German American Bund*.

<u>The Great Sedition Trial of 1944</u>

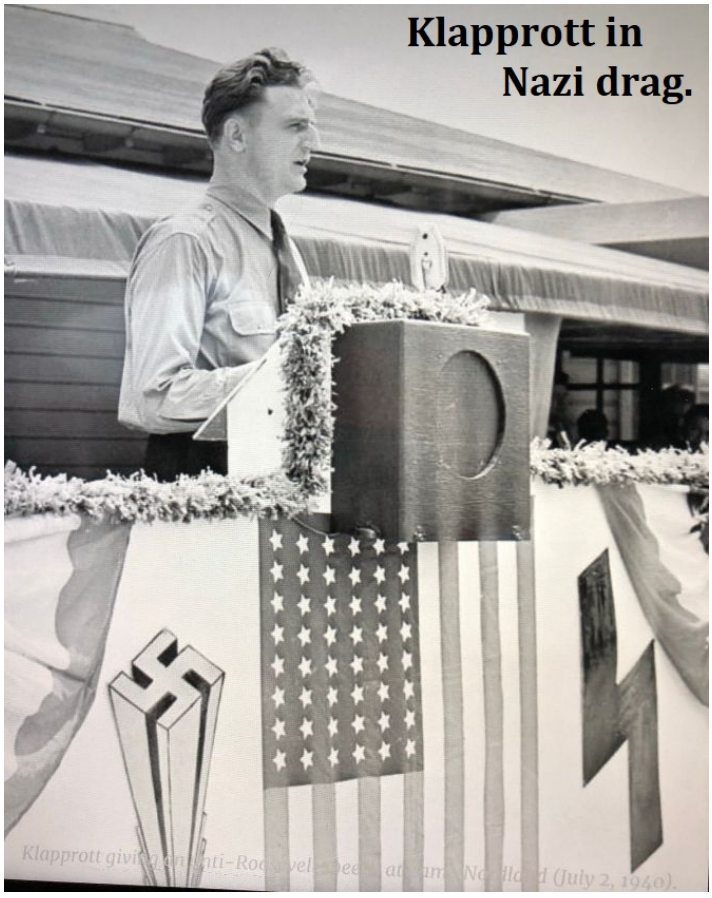
On January 3, 1944 August was one of thirty opponents of American involvement in the war against Germany who went on trial to answer charges of violating the Smith Act of 1940. The chief prosecutor opening argument included:

> *Still another characteristic of the propaganda which the Nazi conspirators and defendants used was that of cloaking themselves with the highest motives. ...They sought to destroy, but they asserted that they were doing just the opposite. They sought to abolish out democratic, representative form of government, but they asserted that they were doing it in the name, of all things,*

of patriotism. They wanted to get us to hate some of our fellow Americans, in fact, to hang them from lamp posts, but they wanted us to believe they would be doing it in the name, of all things, of Christianity. ...

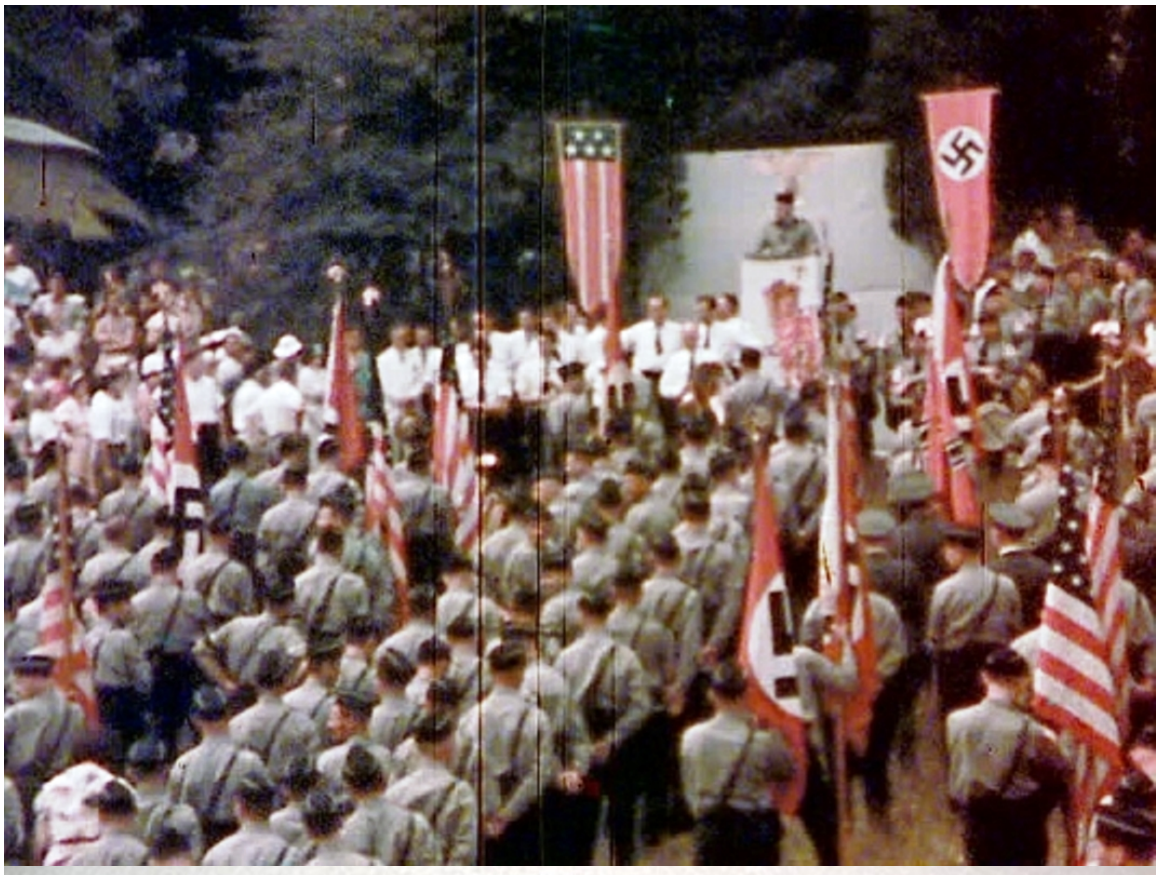
The charges stemmed from their involvement in fascist movements and from cooperation with German forces. The defendants opposed war against Germany and espoused rabid anti-Semitism. *Weckruf* and 42 other publications were deemed "seditious" by the U.S. government.

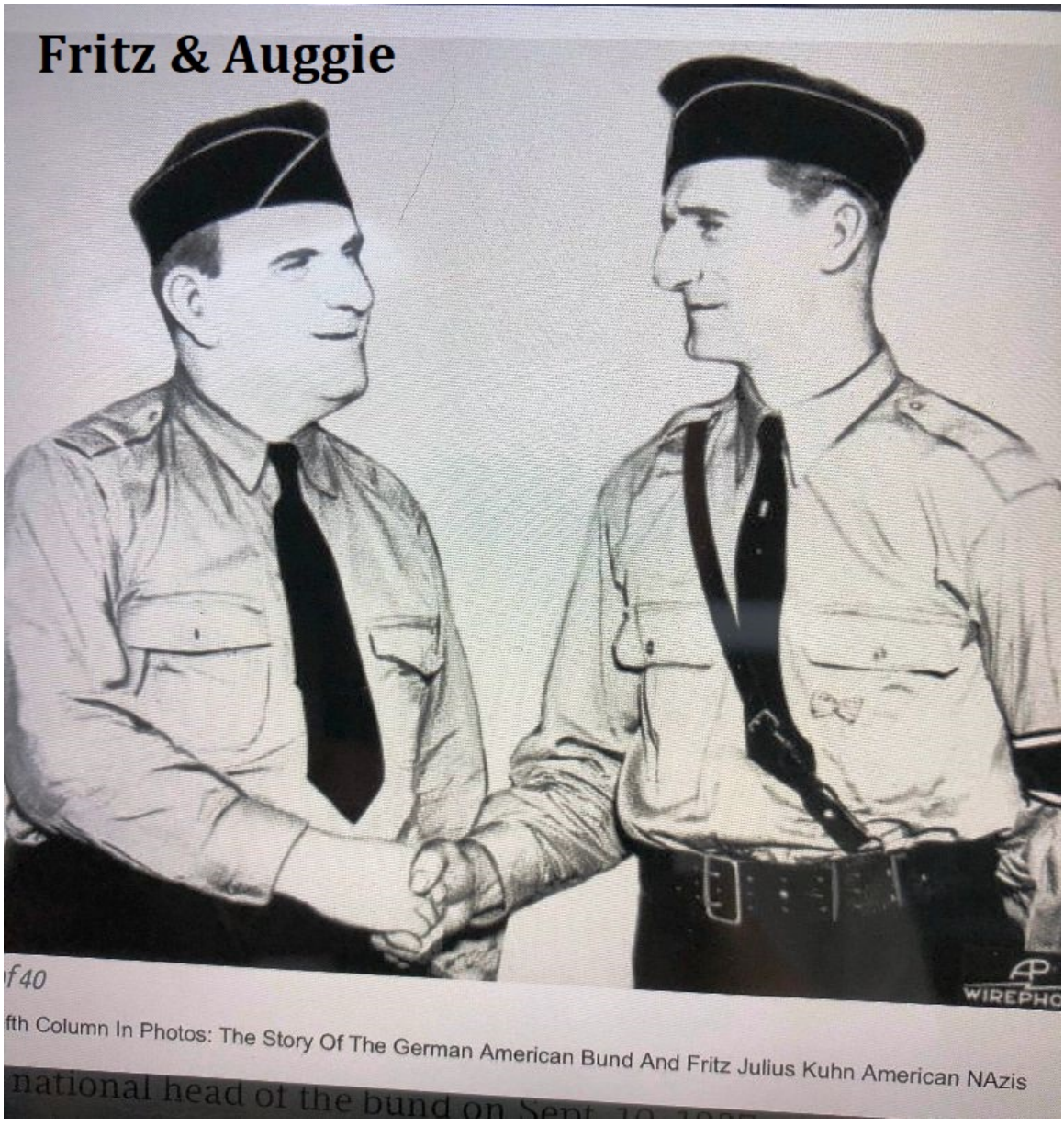
The trial began April 17, 1944, but the prosecution had a difficult time proving specific intent to undermine the morale of the armed forces or to cause armed revolt. The defense attorneys denied the government's contention of an overall Nazi plan to undermine the military's morale. This trial led to the reexamination of our freedoms and our responsibilities. Left wing liberals supported the trial but later this attempt to suppress civil rights undermined their fight for freedom of speech and press. The trial ended in tragedy and farce. Public opinion turned in favor of the defendants and due to the death of the judge, a mistrial was declared November 29, 1944.



At the age of 81, August Klapprott was a guest speaker at the Eighth International Revisionist Conference held in October 1987 in Irvine, California. The conference is under the auspices of the Institute for Historical Review, a Holocaust-denial group founded in 1978. Founded in Torrance, California, it is now headquartered in Fountain Valley, CA and has links to neo-Nazi and neo-Fascist organizations and is very vocal with their anti-Semitism and homophobic hate-speech. The group serves to prove the point that you don't cut out most of a cancerous tumor and leave some behind to see what develops; you excise the entire cancerous growth and destroy it so it can not multiply again.

Camp Nordland is now Hillside Park





New Jersey Herald

LIFESTYLE

Andover's Hillside Park was once Camp Nordland

Staff Writer New Jersey Herald

Published 10:18 p.m. ET April 5, 2014 | **Updated 10:18 p.m. ET April 4, 2015**

ANDOVER TWP. — A Herald reader who recently attended the mid-winter Farmers Market in Andover was somewhat taken aback when informed by another attendee that she felt rather uncomfortable in the Hillside Park barn as it had once been a Bund Hall. He wanted to know if this was a fact. Unfortunately, it was all too true what he had been informed as yes, the German American Bund did indeed have their Camp Nordland in Andover Township at the present day Hillside Park.

By coincidence, under a March 23, 1939, dateline in the Herald's "Looking Back" column, a brief article appeared in which Sussex County resident Miss Nancy Cox implored citizens of New Jersey to "oppose the spread of Nazi propaganda" at Camp Nordland, operated by the German-American Bund in Andover, Sussex County."

The article continued that, "by reviving the myth of a Communist menace to America the Bund is using the familiar tactics of smearing as Communists all responsible persons who object to its activities." Later in the article, Cox denounced the plan, announced by August Klapprott, head of the German American Bund in this state, to hold a July 4 celebration in Camp Nordland. Cox observed that, "if the Bund holds an Independence Day celebration it can only mean a perversion of the significance of Independence Day, which marks our freedom from the same type of tyranny and oppression which the Nazis are forcing on Central Europe today." Cox concluded by observing that "the camp was a real menace to American institutions and should be abolished."

The reason for Cox's concerns appear to be valid for in September 1938, Adolph Hitler had already annexed Austria to Germany, and by the time of Cox's comments, had seized Czechoslovakia as well.

One can follow the events that transpired in or about Camp Nordland from the numerous newspaper articles that appeared not only in the New Jersey Herald but in the New York

Times and Newark papers as well.

In March 1936, the Friends of New Germany changed their name to the German American Bund (League). Their announced goal was to combat the Communists and Jews, whom the Bund considered responsible for the world's economic problems. Also, they supported Hitler's conception of a master race to be comprised of only Anglo-Saxons. Fritz Kuhn was appointed as Fueher and Klapprott was named to head the New Jersey Chapter.

In 1937, a 204-acre site was acquired from the Iliff property. On July 19, 1937, it was reported that Camp Nordland was established on a 200-acre site that could accommodate 300 boys and girls at $5 per week. About 8,000 people converged on the site for beer drinking, speech making and practicing Nazi marches and salutes. Two days later, protests were registered in Washington by Rep. Samuel Dickstein, American Legion and VFW Posts in New Jersey.

In August and September 1939, members of the Ku Klux Klan and members of the Italian Black Shirts were among the groups that visited Camp Nordland.

Things were brought to a head in 1939 when the Bund Camp applied for a renewal of their liquor license with local residents strongly objecting. The hearing was so well attended that the meeting had to be held at the Clinton School in lieu of the township hall that could not accommodate everyone that wished to attend.

The township committee denied the application. Klapprott appealed that decision with Alcoholic Beverage Commissioner D. Frederick Burnett initially issuing a temporary license. This license was repealed when Burnett upheld the township committee's action.

In his decision, the commissioner listed nine activities that he deemed as some of them contrary to law and all hostile to the public interest that had occurred at Camp Nordland. The nine reasons help shed light on the activities that transpired at Camp Nordland up until that date.

"1. On July 4th, the Bund paraded in uniforms similar to those worn in Nazi Germany and imitated the Hitler salute.

"2. Pamphlets, books and propaganda inciting race and religious hatred have been circulated and disseminated.

"3. Speeches and harangues have been made, endorsed with 'heils,' advocating that those who insult Hitler be punched in the nose; that Jews be deported, that all Jewish merchants

and all newspapers, moving picture houses and program sponsors, who employ Jews in preference to Gentiles be boycotted even as is 'The New York Jews' World Fair;' that the President of the United States 'if he had any character left, he had better look for a hole and crawl into it.'

"4. The Nazi flag has been flown above the American flag.

"5. Stress has been laid upon imbedding the purpose of the Bund in the minds of the youth who, naturally enough, are considered the life line. Parents who are members of the Bund, are urged to cause their children to attend the camp's affairs. Song words such as 'We have sworn an oath to our flag,' and 'The flag is our faith in God, people, and country' were taught to them.

"6. Dictators have been glorified. Democracies have been derided.

"7. The Nazi salute has been given while the Star Spangled banner was played.

"8. The swastika is omnipresent. In the picture of George Washington, it is stuck under his nose.

"9. Everywhere there is an undercurrent of accumulating and uniformed force to be unleashed when the right moment comes and the word is passed — drill, goose-step, emulate — 'As we have achieved in Germany, so we will do in America.' "

Burnett added that "Klapprott does not deny this testimony. All he says is that he himself did not do or say so. Yet it was he who, as Master of Ceremonies, introduced the speakers. And it was he who was the leader, supervisor and manager of the whole camp of which the restaurant is but a part. Yet not once did he stop or even lift a finger to interfere with such activities.

"Licensed premises will not be tolerated as hot-beds in which to incubate hate and inculcate subversion. There is no room for the swastika. The appeal is denied. The action of respondent is hereby affirmed. Sept. 12, 1939."

But the activities still did not come to a halt for on June 13, 1940, it was reported that Camp Nordland had reopened for the season on Sunday with an estimated 500 in attendance during the day. It was on July 4, 1940, that three German-American Bund leaders were arrested about an hour before the scheduled Independence Day exercises were to begin. Later, seven Bund trustees were arrested, and in October 1940, indictments were returned

against nine Bund leaders and their attorney. It was not until February 1941 that the defendants were sentenced.

The charter for the Bund was repealed in May 1941. The Herald reported that "Sussex County Sheriff Denton Quick had the satisfaction of searching and closing the camp on Memorial Day after serving a search warrant on Klapprott. Nazi flags and uniforms, guns and pictures of Hitler were confiscated and turned over to the FBI, the crowd of 500 at the camp were dispersed, and the gates padlocked by Quick, much to the relief of county residents.

"The property was turned over to the Enemy Alien Custodian and subsequently sold to Frank and Eleanor Bucino." On May 26, 1945, executors of their estate sold the property to Camp Clearwater Inc. Since then, the township has acquired the property and renamed it Hillside Park. And, now, in lieu of Bund children learning to do the goose-step and salute heil Hitler, Andover Township residents may enjoy the recreation fields and other activities held at Hillside Park including the mid-winter Farmers Market.

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Jennie Sweetman is the history columnist for the New Jersey Herald. She may be contacted at jenniee@warwick.net.

NJ's Hitler Youth camp, Camp Nordland, Pete Green Productions, 27 July 2016, 15:26. YouTube URL: https://www.youtube.com/watch?app=desktop&v=GhO4MIRYemU

State of New Jersey

Department of Alcoholic Beverage Control

Bulletin 328

3 July 1939

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street, Newark, N. J.

BULLETIN 328 JULY 3, 1939.

1. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK ORDERED.

In the Matter of the Seizure of a still at 1814 Baltic Avenue, in the City of Atlantic City, County of Atlantic and State of New Jersey.

On Hearing

CONCLUSIONS AND ORDER

No Appearances.

Investigators of this Department seized an unregistered alcohol distillery being operated by Barney Loffland in an apartment on the second floor of a dwelling at 1814 Baltic Avenue in Atlantic City. The still equipment, seventeen fifty-gallon barrels of mash, fifty-five gallons of illicit alcohol, and paraphernalia appurtenant to the still (described in Schedule "A" annexed hereto) were seized as unlawful property under the provisions of R.S. Title 33, Chapter 2.

At a hearing duly held to determine whether the seized articles should be confiscated and the premises padlocked, no one appeared to contest the proceedings.

Under the statute, an unregistered still and articles used or adaptable for use in connection therewith are subject to confiscation, and, in addition, a padlocking penalty may be imposed upon the premises in or upon which such still is found. No cause was shown at the hearing why confiscation and padlocking should not result in the instant case.

However, after the hearing, a firm of accountants advised this Department that Charles I. Burkhardt, the owner of the realty, desired to avoid padlocking of the premises. They were advised that the Commissioner would accept Mr. Burkhardt's verified petition setting forth certain facts pertinent to the determination as to whether the premises should be padlocked.

Instead of submitting a verified petition, the accountants submitted their letter in which they set forth various alleged facts which were patently hearsay and, in addition, were not sworn to. The accountants were advised that their letter could not be accepted and were instructed to have Mr. Burkhardt submit either his affidavit or that of his real estate agent.

Thereafter, the accountants forwarded Mr. Burkhardt's affidavit in which he stated, in effect, that B. C. Lynch, Inc. has sole charge of the property; and also forwarded a letter from B.C.Lynch, Inc. to Charles I. Burkhardt, which letter is signed "B. C. Lynch, Inc." and is purportedly sworn to before a Notary Public.

It is thus evident that Mr. Burkhardt has made no personal effort to avoid padlocking despite repeated opportunities afforded to him. The correspondence has been entirely with his accountants, who cannot properly represent him in these proceedings, and no sworn statement of the pertinent facts, made by the person having knowledge thereof, has been submitted.

4. SPECIAL PERMITS - IN RESPECT TO RENEWAL LICENSES WHERE LICENSE ISSUING AUTHORITY HAS NEITHER GRANTED NOR DENIED APPLICATION FOR RENEWAL - HEREIN OF CAMP NORDLAND.

In the Matter of)

AUGUST KLAPPROTT,) On Petition for Special Permit
T/a Camp Nordland

- - - - - - - - - - - - - - -) CONCLUSIONS

BY THE COMMISSIONER:

It appears from the petition that Klapprott now holds a plenary retail consumption license issued by the Township Committee of Andover for premises known as Camp Nordland, which is owned and used by the German-American Bund Auxiliary; that application was filed for the renewal of his license with the Township Committee on June 10th, accompanied by payment of the full annual fee and evidence of the Federal special tax stamp; that notice of the application was published on June 15th and June 22nd; that on appearing before the Township Committee on June 24th he was informed that objections had been filed to the issuance of the license and that the Township Committee had set June 29th for hearing on the objections; that the hearing commenced at 10:00 A.M. on June 29th and was adjourned at 6:00 P.M. until July 3rd; that at the time of adjournment but a small portion of the objectors' testimony had been taken; that petitioner believes that the objectors' testimony will consume at least two or three more days and that petitioner's testimony will require at least seven days; that petitioner has conducted his business for a period of two years in a lawful manner and has never committed a violation of the law or rules or municipal regulations; that he has a large restaurant and has owned large stocks of alcoholic beverages to meet his anticipated trade, which at times approximates 5,000 persons per day, and that he has invested large sums of money to establish the good will of the business.

Petitioner therefore requests a special permit to authorize continuance of the business until the matter can be adjudicated.

The request is reasonable and the facts alleged warrant the relief as prayed.

Klapprott is entitled to his full day in court, whatever kind of a place he ran or purposes to conduct. The practice of convicting a man before he is tried is a dangerous business in a democracy.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 30, 1939.

State of New Jersey

Department of Alcoholic Beverage Control

Bulletin 330

10 July 1939

13. SPECIAL PERMITS - VIOLATION OF ACT CONCERNING PROPAGANDA INCITING RACE, COLOR OR RELIGIOUS HATRED - HEREIN OF CAMP NORDLAND.

July 5, 1939

Mr. August Klapprott,
(Camp Nordland),
Andover Township,
Sussex County, N. J.

Sir:

On June 30th, upon your petition representing that you had not had your full day in court in respect to proceedings pending before the Andover Township Committee concerning objections filed to the issuance of a renewal license, I issued to you Special Permit SM-43.

This permit had the same force and effect as a plenary retail consumption license and enabled you to continue business until the merits of the pending controversy could be decided by the regular processes of the law in such case made and provided.

The permit provided, among other things:

"This permit may be cancelled by the State Commissioner in his absolute discretion at any time without notice or assignment of reason or cause."

On June 26th, Assembly Bill 593, introduced by Assemblyman R. Graham Huntington, which had passed the Assembly and the Senate, was approved by Governor Moore, and thereby became Chapter 98 of the Laws of 1939. By its terms it became effective immediately. It provides:

"AN ACT concerning propaganda inciting race, color or religious hatred, and supplementing chapter one hundred fifty-seven-B of Title 2 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Wearing of uniforms; prohibited.

"a. It shall be unlawful for any person to appear in any public place or in the public view attired in any uniform similar to that worn by the military, semi-military, naval, police, storm troop or other official or semi-official forces of any foreign State, nation or government, or attired in any distinctive part or parts of such uniform, or to assemble in any place with other persons similarly attired.

"b. It shall be unlawful for any person to appear in any public place or in the public view attired in the uniform or wearing the distinctive garment of any association of persons of whatsoever nature or form which engages in, adopts or imitates the drill formations, salutes or other methods or practices or the symbols of any foreign military,

semi-military, naval, police, storm troop or similar foreign organization, or to assemble in any place with other persons similarly attired.

"c. It shall be unlawful for the proprietor, manager or keeper of a public hall, public garden, theatre or any other place of public meeting, resort or amusement to permit therein any assemblage of persons attired as prohibited in this section.

"d. In any prosecution hereunder, there shall be presumption that the wearing of the uniform of a foreign State, nation or government, or of any of its official or semi-official forces, constitutes a violation of this section.

"This section shall not apply to the officers or members of the diplomatic, military, semi-military, naval, police or other official or semi-official forces of any foreign State, nation or government lawfully within the State of New Jersey, nor to any student of any school or academy recognized by the Board of Regents of the State of New Jersey, nor to the members of the cast of any stage or motion picture production characterizing the officials of a foreign State, nation or government, or the officers or members of any of the organizations specified in subdivision a of this section; nor to any duly recognized organization of American ex-service men and women.

"2. Any person violating any provision of this chapter shall be punishable by a fine of not more than five thousand dollars ($5,000.00) nor less than two hundred dollars ($200.00), or by imprisonment for not exceeding three years, nor less than ninety days, or both.

"3. This act shall take effect immediately.

I am this morning informed by Assemblyman Huntington that, in defiance of the law, every section of the statute last mentioned was openly and flagrantly violated yesterday on your licensed premises at Camp Nordland.

I also have before me this morning's issue of the Newark Ledger and of the New York Times which contain pictures purporting to show violation of the statute.

Notwithstanding the existence of the above quoted power reserved to me to cancel the permit at any time without notice or assignment of reason, I shall not exercise it without affording you fair and full opportunity to prove, if you can, albeit upon short notice, that Chapter 98 of the Laws of 1939 of New Jersey was not violated July 4, 1939.

You will, therefore, the premises considered, show cause before me at the Department offices, 744 Broad Street, Newark, N.J., on July 6, 1939, at 11:00 A.M. (Daylight Saving Time), why special permit SM-43 shall not be cancelled forthwith.

Very truly yours,

Frederick Burnett

Commissioner.

State of New Jersey

Department of Alcoholic Beverage Control

Bulletin 331

12 July 1939

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street Newark, N. J.

BULLETIN 331 JULY 12, 1939.

1. SPECIAL PERMITS - REVOKED FOR VIOLATION OF LAW SUBSEQUENT TO ISSUE - HEREIN OF THE WEARING OF THE SWASTIKA.

In the Matter of the)
Special Permit)
heretofore issued to) ON ORDER TO SHOW CAUSE
AUGUST KLAPPROTT) CONCLUSIONS

For the State: Emerson A. Tschupp, Esq.,
For the Licensee: Wilbur V. Keegan, Esq.

BY THE COMMISSIONER (orally on July 6, 1939 at the close of argument):

The first question raised one of jurisdiction in that the statute, Chapter 98 of the Laws of 1939, does not specifically delegate to me any authority to enforce it. That is true of a great many laws which I have enforced in the State of New Jersey for the last five years. If murder or rape occur on licensed premises, action is quickly taken by this Department. There is nothing in the law about gambling, vice or immorality which specifically delegates it to me to enforce, but the point is that the law is going to be enforced in licensed premises in the State of New Jersey whether there is any specific delegation or not. I therefore rule that I have jurisdiction in the premises.

The issues have been fairly presented by both sides and it has been a delight to sit in a case where the procedure has been orderly and intelligent.

The big thing is whether the law which became effective on June 26, has been violated at Camp Nordland. Klapprott has had a liquor license for the last two years. When he applied for a renewal, the Township Committee received objections and set a date for hearing, but the hearing took so long that they could not possibly complete the case until after the fiscal year expired on June 30. In order that his rights might be preserved, pending a decision, I granted a special permit. In line with the usual practice the permit provides on its face that it might be cancelled by the Commissioner in his absolute discretion at any time without notice or assignment of reason. In spite of that reserved power, the power has never been arbitrarily exercised. It has always been upon notice and an opportunity to be heard. The question before me now is, "Should it be cancelled?", and that in turn depends upon whether the laws of the State of New Jersey have been violated.

The statute has two effective parts: Section 1, subdivision a, makes it unlawful for any person to appear in the

public view attired in a uniform similar to that worn by the military or semi-military or storm troopers or other official or semi-official forces of any foreign state, or to be attired in any distinctive part of such uniform or to assemble in any place with other persons similarly attired.

You will note that it does not say "identical".

Now, I am sitting as a judge. The question is not whether the Legislature should have passed it. That is a question to address to the Legislature. The law as written says that it is unlawful to appear in a similar uniform. Sub-division b makes it unlawful to be attired in such a uniform and to "imitate" the drill formations and salutes. Once again it is not "identity", it is "similarity."

Now the witness, Macfarland, testified that the uniform, as he saw it on the 4th at Nordland consisted of a gray shirt, sometimes brown, black trousers or leggings, Sam Brown belt and black overseas cap, and that was tested up with many different uniforms set forth in this red book, the organization book of the National Socialist Party of Germany.

I say right here that there is no question of propaganda, no question of crime involved or any incitement to riot. The one question to which I confine myself is whether this statute was violated.

The witness Kunze pointed out on these various tables in the red book all these different uniforms in use in Germany and he said that there was a definite, distinct attempt to avoid any similarity in the uniform used by the Bund in this country. Now, I do not agree that that is any reason for looking askance at what he says, as suggested by counsel for the State. I think that is a proper thing to do, that is, to try to avoid such similarity. The real question, however, is not whether they tried to avoid, but whether they did avoid.

Now, on table two there are two men, and as I looked at the pictures of those two men, I found that each one had on his uniform a swastika. Table three the same thing. So with tables four, twelve and fourteen. In table twenty-three the man had a swastika, but the woman did not. In table twenty-four two of them had the swastika on. In tables thirty-one and thirty-two, which showed four people, three out of four had it. In table thirty-four each of them had it. In tables forty-seven and forty-eight, showing four uniforms, three out of four had it. So without going through the long list I find that on all of these uniforms, with the exception of overcoats or capes, that there is one common factor -- that the distinctive thing which stands out, whatever the type of the uniform, is the swastika.

Now, it was brought out in evidence that this arm band of the O. D. has at its very top a swastika. The uniforms that are presented in that book are different. Each varies from the other and each of them varies from the precise form of uniform of the O.D. such as was worn at Camp Nordland, but each one of them bears the common factor of the swastika.

In exhibit S-4, in this picture of George Washington, in this pulpit right in the central prominent part you find engraved there or cut in stone a swastika. Each of the participants carrying the American flag also carried a swastika on his arm band; and each

one of them carrying the O.D. flags, such as the one of Hudson County, has on his arm band a swastika, and even on the flag itself there is a swastika.

Now, if I see the hammer and the sickle, I think of Russia. If I see a bunch of fagots and the hatchets, I think of Italy. If I see the swastika, I do not think about Indians, I think about Germany. If I saw soldiers or sailors or marines of our own, they would all have on different uniforms and they would all look entirely different. Their uniforms may be distinctly different but they may have a common factor. If I find on their arm bands the stars and stripes, then I know at once they are from the United States of America and it would not make any difference whether they were on foot, on horseback, on a tank, or on a gun boat. Then I know that they pull together. So with the swastika. That's where the similarity comes in.

Again, the statute says an "imitation" of a salute. The salute which was given here this morning in Court was admitted to be the exact salute which is given in Germany and which I saw with my own eyes just about four years ago in the city of Danzig.

I find, therefore, that the statute was violated at Camp Nordland on July 4th as to Sections a and b and therefore, in the exercise of the same discretion by which I granted the special permit, I now and hereby revoke it because of such violation.

This decision is without prejudice to the case on the merits. That is still open to be fought out. All I am doing is withdrawing the special permit to operate without a license. That is revoked forthwith. That is all.

2. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on May 22, 1939 of a Chevrolet coach and a quantity of alcohol, in the vicinity of and at 119 Broome St., in the City of Newark, County of Essex and State of New Jersey.	ON HEARING CONCLUSIONS AND ORDER

No Appearances.

On May 22, 1939, Police Officers of the City of Newark observed the arrival of James Cuva's Chevrolet coach in the vicinity of 119 Broome Street, and the delivery of a quantity of alcoholic beverages from the vehicle to an apartment house at the Broome Street address. Some of the officers entered the building and found two five-gallon cans and two one-gallon jugs of alcohol in a vacant apartment, and a five-gallon can of alcohol on the roof of the building. Other officers apprehended Philip Galiano, the driver of the vehicle, after he had endeavored to escape.

Since the various cans and jugs in which the alcohol was contained bore no Federal tax stamps or other indication that said alcohol was tax paid, and further, since the motor vehicle was not licensed to transport alcoholic beverages, the officers seized the vehicle and alcohol as unlawful property under the provisions of R.S. Title 33, Chapter 1.

State of New Jersey

Department of Alcoholic Beverage Control

Bulletin 332

14 July 1939

10. SPECIAL PERMITS - WHY ISSUED AND WHY CANCELLED - HEREIN OF CAMP NORDLAND AND ISMS.

Dear Mr. Burnett:

I have read that you have issued a special temporary permit to the German (American) Bund Camp Nordland, in Newton, N.J. to sell liquor.

We 100 percent Americans are continually fighting any and all foreign Isms, and you by issuing the above permit encourage them.

The majority of the members of the Bund are aliens, and they have favors shown them instead of discouraging them.

Such acts as the above mentioned make it more difficult for we veterans in our fight against Isms.

I, as a veteran of the Spanish American War and the World War, send this letter as a protest to the above mentioned permit.

Very truly yours,

J. A. LAWRENCE
Past Commander of The American Legion Post, Red Bank, N.J.

July 8, 1939.

Hon. J. A. Lawrence,
Past Commander, American Legion Post
of Red Bank,
Colt's Neck,
New Jersey.

My dear Commander:

I note your protest but respectfully dissent from your conclusions.

The reason this permit was issued was because Klapprott, an American citizen, had applied for renewal of his license but the Township Committee, in view of objections filed and hearings then and now in process, had neither granted nor denied it. If it should later eventuate that he was entitled to a license, there is no way in which days lost could ever be given back. He swore that he had conducted his business for two years in a lawful manner and never committed a violation of the law, or the rules and regulations and that he had invested large sums of money to establish the good will of his business. If you were in his place, wouldn't you deem it an outrage if your business were to be suddenly brought to a halt because somebody said something about you which you had no chance to defend? The practice of convicting a man before he is tried

is a dangerous business in a democracy.

Of course, I issued the permit.

Later, on July 6th, on complaint that the law which forbade the wearing of uniforms similar to those of the Nazis or of imitating Hitler's salutes, had been violated at Camp Nordland on July 4th, I conducted an all day hearing at which both sides were fully heard.

It thereby became clear that the law had been violated, both as to uniforms and as to salutes. True, the law did not declare whether the forbidden acts were a misdemeanor, or what, but it was an expression of the will of the sovereign State of New Jersey, and that was enough.

Of course, I cancelled the permit.

Please do not think for a moment that I encourage swastikas or goose-stepping. We must not, however, do here the very thing we condemn abroad. Savagery feeds on reprisals. Like begets like. The golden rule will never prevail except by force of example.

"Isms" are not squelched by hitting below the belt or making martyrs. We, who glory in our priceless heritage of due process of law — or fair play which is but another name for it — should be the first to practice what we preach.

I don't like, any more than you, to see a swastika stuck under the nose of George Washington. The swastika is not a substitute for the Stars and Stripes -- there isn't room for both.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. ADVERTISING - MISLEADING COMPARISONS SEEKING TO PROMOTE ONE PRODUCT AT THE EXPENSE OF ANOTHER — DISAPPROVED.

July 6, 1939

M. E. Blatt Co.,
Atlantic City, N. J.

Gentlemen:

There has come to my attention your advertisement in the June 16th issue of the Atlantic City Evening Union, in which, among other things, you offer for sale:

"Bottled in Bond!
STRAIGHT KENTUCKY
BOURBON
full
$1.98 fifth
Made by the well known
Bardstown Distillery.
This Whisky is the same
type as Old Grand Dad that
sells for $2.90 a Fifth."

State of New Jersey

Department of Alcoholic Beverage Control

Bulletin 335

21 July 1939

14. APPEALS - CAMP NORDLAND - INTERIM RELIEF - WHY THE DISCRETION NOT EXERCISED - HEREIN OF THE HEARING ON APPEAL.

July 17, 1939

Hon. Egbert Rosecrans,
Blairstown, N. J.

Dear Judge Rosecrans: Re: Camp Nordland.

I have yours of the 15th in capacity of counsel for objectors to grant of license to August Klapprott, requesting that in case of appeal by the applicant from the action of the Andover Township Committee, that you be given opportunity to be heard in the event that application is made to me for an ad interim license.

An appeal was filed on July 15th by Wilbur V. Keegan, Esq. in behalf of August Klapprott. The petition contained the usual prayer for ad interim relief until the appeal could be heard and decided. I did not grant any stay or extension notwithstanding that I normally do in cases where the renewal of an existing license has been denied. The reason why the discretion was not exercised was because I had had to cancel, for cause, a special permit issued at the close of the fiscal year to tide over the hearings then in process before the local Township Committee. While that cancellation was made without prejudice to any appeal which might be made on the merits, I saw no reason for again granting interim relief until the matter could be thoroughly and fairly threshed out on the merits. In lieu thereof, I set the case down for early hearing and will endeavor to decide it as soon as the testimony to be taken is transcribed and presented to me with the pleadings and exhibits.

The appeal hearing is set for Monday, July 24th, at 10:00 A.M. The rules provide that all appeal cases are tried de novo. It will therefore be necessary for you and your witnesses to attend on the 24th, as the decision will be rendered exclusively on the facts as testified by witnesses both sworn and subject to cross-examination, and upon the law applicable thereto.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. DISCIPLINARY PROCEEDINGS - BINGO - TECHNICAL VIOLATION - HEREIN OF THE IRVINGTON COMMISSIONERS AND THE IRVINGTON ELKS.

July 17, 1939

W. H. Jamouneau, Town Clerk,
Irvington, N. J.

My dear Mr. Jamouneau:

Your Board discharged a public duty splendidly in handling the disciplinary proceedings against the Elks and suspending their license because of infraction of the bingo rule. I understand from Exalted Ruler Spitz that every member of your Commission that sat were Elks; that Town Attorney William Newman is likewise an Elk and a member of the very Lodge. I know, from the record, that while the game was played in a room in which a bar was located, the bar was not in use and moreover was not in condition to be used as a bar. The violation, therefore, was wholly technical.

State of New Jersey

Department of Alcoholic Beverage Control

Bulletin 337

28 July 1939

13. APPELLATE DECISIONS - PRESENT STATUS OF CAMP NORDLAND CASE - HEREIN OF THE NATURE OF THE PROBLEM PRESENTED.

July 27, 1939.

Mr. Arthur D. Wilson,
Newton, N. J.

My dear Mr. Wilson: RE: CAMP NORDLAND

I have before me your letter and petition signed, as you say, by approximately 1,000 residents of Sussex County requesting me to uphold the decision of the Township Committee of Andover in denying renewal of a liquor license to August Klapprott. This outdoes the petition bearing 933 signatures filed in his behalf. You understand, of course, that cases are not decided by counting names on petitions but solely on the sworn testimony subject to cross-examination and the law applicable to the facts so established.

The hearing was held on Monday, July 24th. The testimony taken in the long hearings before the Township Committee, consisting of 316 pages, together with the testimony taken on July 24th, which covers an additional 101 pages, together with the briefs of the lawyers, have now been dumped in my lap for decision. It means that I shall have to read the testimony from beginning to end, which is, of itself, a staggering job in the midst of many others also crying for disposition and then to consider the pleadings, the exhibits and the briefs of the lawyers.

I do not entertain, let alone express, any opinion on the merits of the case. Everything depends on the facts brought out in the testimony.

I am glad that you and your fellow signers are so interested in this matter and shall send you a copy of the decision when made, whether it accords with your views or not. My position is that of a judge or an umpire and I have to call the strikes just as I see them. In our zeal to uphold American institutions, we must be very careful lest we ourselves violate the American principle of a square deal and a fair trial by an unprejudiced judge. In this respect, the case is comparable to a murder trial. I have no hesitancy in saying, as judge, that if one man murders another he should get the chair. But the question to be decided is whether the man charged with the crime is or is not guilty. So, in the instant case, I haven't any idea until I read the testimony whether or not the appellant is guilty of violating the law or of anything else which should deprive him of a license. That is what the present trial is for.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

State of New Jersey

Department of Alcoholic Beverage Control

Bulletin 344

18 September 1939

9. APPELLATE DECISIONS - KLAPPROTT v. ANDOVER TOWNSHIP.

AUGUST KLAPPROTT,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF TOWNSHIP OF ANDOVER,) ON APPEAL
) CONCLUSIONS.
Respondent.)

. . . . . .

For Appellant, Wilbur V. Keegan, Esq.
For Respondent, Peter Friedman, Esq.,
For Objector, Carl Kepner, Egbert Rosecrans, Esq.,
For Objector, William Dodd, J. George Fredman, Esq.

BY THE COMMISSIONER:

Camp Nordland is a 200 acre tract in Sussex County, owned by the German-American Bund Auxiliary. On it, besides a boys' camp and one for girls, is a restaurant leased to and operated by August Klapprott wherein is served, as he says, as many as 5,000 persons in one day. His application for renewal of the liquor license which expired June 30, 1939 was denied. Hence this appeal.

The Township Committee alleges that Klapprott made mis-statements in his application in that he suppressed all information that the Bund had an interest in the license sought and in the business thereunder conducted.

It appears that he answered "No" in response to the interrogatory

> "Has any person.....corporation or association, other than the applicant, any interest directly or indirectly in the license applied for or in the business to be conducted?"

The question, therefore, is - Does the Bund have such an interest?

The lease from the Bund to Klapprott recites that the premises have been let

> "from month to month to be used and occupied by the tenant solely for the purpose of conducting thereon the business which he is entitled lawfully to conduct as the holder of a plenary retail consumption license . . . . . and in connection therewith the conduct of a restaurant."

The annual rent is $4600, stipulated in Paragraph 3, as follows:

> "Until the termination of the tenancy of the Tenant he shall pay during each one of the months of May, June, July, August and September of each and every year of such tenancy, the sum of $500.00 Five hundred dollars provided, however, that if during any one of said months the net profit realized by him in the conduct of all the businesses aforesaid shall not equal $500.00 Five hundred dollars, then the rental for the given month shall be reduced to an amount equal to said net profit for said month, so that in no case shall he be liable to pay rent for any one of said months in excess of the amount of the net profit realized by him from the conduct of his said businesses during such month."

Then follows a stipulation for rent of $300. per month for the months of January, February, March, April, October, November and December of each year of the tenancy in the same language and subject to the same proviso for reduction to the amount of realized net profits.

Paragraph 4 of the lease reads:

> "The provisions of the preceding paragraph (3) have been adopted and agreed upon by the parties to this indenture because of the uncertainty of the extent of the businesses which the Tenant may be able to develop upon the premises let to him."

It is clear that the object of the lease was to exploit the liquor license and that the rental was contingent upon the profits of the business.

If it be said that, however much the Bund is interested in the profits as a source of income, nevertheless the tenant might keep the excess, the answer is that the tenant didn't! The Bund treasurer testified that Klapprott paid it more rent in 1937 than stipulated -- "might be called contribution." How much more he did not say and the Bund refused to submit its books. Klapprott himself swore that he paid $7200 rent in 1938 although the stipulation was but $4600. Asked why, he replied: "Because I felt I made a little too much profit and paid them more."

Appellant argues that sharing profits as rent does not automatically make partners. Correct! But it is also true that such income division makes the Bund a participant in the business and that is what Klapprott's oath denied.

The testimony shows that Klapprott is the President of the Bund and resident general manager, leader and supervisor of the entire Camp Nordland; that Bund funds and his were continually commingled; that the equipment belonged to the Bund; that his sales records as licensee were signed by the treasurer of the Bund who acted as cashier for the licensee but received no compensation from him; that Bund members were generally employed by him without pay.

If this were Klapprott's own business, would he invest large sums in developing it upon a month to month tenancy whereby he could be ousted upon a mere month's notice? Or upon an agreement which split profits without any definition of how the net was to be computed -- how much for salaries, insurance, taxes, depreciation? Or upon an arrangement whereby all uncertainties were shouldered by the tenant? Or make egregious gifts to show devotion to his landlord?

All absurdities and the need for explanations of the kind "made in Germany" are ironed out once it is predicated that the business really belongs to the Bund and that the interlocking President-licensee is merely the leader principle in action.

In the face of this record which, at the least, calls for complete and adequate explanation, the Bund refused to produce its books and records. Without pausing to consider whether such contempt is ground of itself for denial of license, suffice it to say that the high-handed refusal warrants every intendment of deceptive concealment that may reasonably be derived from it. It confirms the inference that the business is that of the Bund.

I conclude that the Bund has a direct interest in the licensed business; that the liquor business at Camp Nordland is primarily its own; that Klapprott is a mere front or alter ego for it; that his sworn declaration that no one else was interested in the license sought is therefore false.

There are other matters of even graver moment.

The record shows that activities, some contrary to law and all hostile to the public interest, have occurred at Camp Nordland, viz:

1. On July 4th, the Bund paraded in uniforms similar to those worn in Nazi Germany and imitated the Hitler salute.

2. Pamphlets, books and propaganda inciting race and religious hatred have been circulated and disseminated.

3. Speeches and harangues have been made, endorsed with "heils", advocating that those who insult Hitler be punched in the nose; that Jews be deported, that all Jewish merchants and all newspapers, moving picture houses and program sponsors who employ Jews in preference to Gentiles be boycotted even as is "the New York Jews' World Fair"; that the President of the United States "if he has any character left, he had better look for a hole and crawl into it."

4. The Nazi flag has been flown above the American Flag.

5. Stress has been laid upon imbedding the purpose of the Bund in the minds of the youth who, naturally enough, are considered the life line. Parents who are members of the Bund, are urged to cause their children to attend the camp's affairs. Songs are taught them, e.g. "We have sworn an oath to our flag, the flag is our father and God."

6. Dictators have been glorified. Democracies have been derided.

7. The Nazi salute has been given while the Star Spangled Banner was played.

8. The swastika is omnipresent. In the picture of George Washington it is stuck under his nose.

9. Everywhere there is an undercurrent of accumulating and uniformed force to be unleashed when the right moment comes and the word is passed — drill, goose-step, emulate — "As we have achieved in Germany, so we will do in America."

Klapprott does not deny this testimony. All he says is that he himself did not do or say so. Yet it was he who, as Master of Ceremonies, introduced the speakers. And it was he who was the leader, supervisor and manager of the whole camp, of which the restaurant is but a part. Yet not once did he stop or even lift a finger to interfere with such activities.

Licensed premises will not be tolerated as hot-beds in which to incubate hate and inculcate subversion. There is no room for the swastika.

The appeal is denied. The action of respondent is hereby affirmed.

D. FREDERICK BURNETT,
Commissioner.

September 12, 1939.

10. NEW LEGISLATION - LICENSES - RENEWAL DEFINED.

Assembly Bill No. 533 was approved by Governor Moore on August 2, 1939, and thereupon became Chapter 281, P.L. 1939.

It was effective immediately.

"An Act concerning the renewal of alcoholic beverage licenses, and supplementing chapter one of Title 33 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Any license which is issued for a new license term to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new term shall be deemed to be a renewal of the expired or expiring license; provided, that said license is of the same class and type as the expired or expiring license, covers the same licensed premises and is issued to the holder of the expired or expiring license; and provided further, that the application for said renewal shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement of said new license term shall be deemed to be applications for new licenses.

"2. This act shall take effect immediately."

State of New Jersey

Department of Alcoholic Beverage Control

Bulletin 376

4 January 1940

SCHEDULE "A".

1 - 1936 Plymouth Sedan, Body No. 805-13246, Serial No. 2867474, Engine No. P-2357278, 1939 New Jersey Registration No. JP 45 V.

9. COURT DECISIONS - NEW JERSEY SUPREME COURT - KLAPPROTT v. BURNETT, COMMISSIONER.

AUGUST KLAPPROTT,)
Applicant,)
-vs-) ON APPLICATION FOR WRIT OF CERTIORARI.
D. FREDERICK BURNETT, Commissioner of Alcoholic Beverage Control,)
Respondent.)

Paterson, November 4, 1939

Before:

HON. HARRY HEHER,
Supreme Court Justice.

Appearances:

For the Applicant: ANTHONY J. ARMORE, Esq.
For the Respondent: EMERSON A. TSCHUPP, Esq.

THE COURT: I haven't any difficulty at all with this question. I see no debatable issue. If the Commissioner had misapprehended the law and there was a fairly debatable question as to whether or not he had, for instance, as to the location of the licensed place with respect to a church or school, and he read it one way and the applicant said the law meant something else, and the conclusions of the Commissioner clearly indicated that if he were not under what might be a misapprehension of the law he would have granted the license, I think that there a question of law might be presented, but here I find no such question. The Commissioner in findings that are quite extensive demonstrates that in his judgment the public interest will not be served by the continuance of a liquor license on these premises, that is, the license granted to this particular applicant, and I think that all these questions about the constitutionality of the statutes relating to the wearing of military uniforms of a foreign power, and hate, and what-not are beside the point. This was a discretionary authority vested in the Commissioner and I see no reason to question his exercise of it, so I deny the application.

CHAPTER 98

AN ACT concerning propaganda inciting race, color or religious hatred and supplementing chapter one hundred fifty-seven-B of Title 2 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

Wearing uniform.

1. Wearing of uniforms; prohibited.

Wearing foreign uniform unlawful.

a. It shall be unlawful for any person to appear in any public place or in the public view attired in any uniform similar to that worn by the military, semi-military, naval, police, storm troop or other official or semi-official forces of any foreign State, nation or government, or attired in any distinctive part or parts of such uniform, or to assemble in any place with other persons similarly attired.

Not use uniform of foreign associations.

b. It shall be unlawful for any person to appear in any public place or in the public view attired in the uniform or wearing the distinctive garment of any association of persons of whatsoever nature or form which engages in, adopts or imitates the drill formations, salutes or other methods or practices or the symbols of any foreign military, semi-military, naval, police, storm troop or similar foreign organization, or to assemble in any place with other persons similarly attired.

Assemblages prohibited.

c. It shall be unlawful for the proprietor, manager or keeper of a public hall, public garden, theatre or any other place of public meeting, resort or amusement to permit therein any assemblage of persons attired as prohibited in this section.

Presumption of violation.

d. In any prosecution hereunder, there shall be presumption that the wearing of the uni-

form of a foreign State, nation or government, or of any of its official or semi-official forces, constitutes a violation of this section.

Exceptions.

This section shall not apply to the officers or members of the diplomatic, military, semi-military, naval, police or other official or semi-official forces of any foreign State, nation or government lawfully within the State of New Jersey, nor to any student of any school or academy recognized by the Board of Regents of the State of New Jersey, nor to the members of the cast of any stage or motion picture production characterizing the officials of a foreign State, nation or government, or the officers or members of any of the organizations specified in subdivision a of this section; nor to any duly recognized organization of American ex-service men and women.

Penalties.

2. Any person violating any provision of this chapter shall be punishable by a fine of not more than five thousand dollars ($5,000.00) nor less than two hundred dollars ($200.00), or by imprisonment for not exceeding three years, nor less than ninety days, or both.

3. This act shall take effect immediately

Approved June 26, 1939.

INVESTIGATION OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES

SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES HOUSE OF REPRESENTATIVES

SEVENTY-EIGHTH CONGRESS

FIRST SESSION

ON

H. Res. 282

TO INVESTIGATE (1) THE EXTENT, CHARACTER, AND OBJECTS OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES, (2) THE DIFFUSION WITHIN THE UNITED STATES OF SUBVERSIVE AND UN-AMERICAN PROPAGANDA THAT IS INSTIGATED FROM FOREIGN COUNTRIES OR OF A DOMESTIC ORIGIN AND ATTACKS THE PRINCIPLE OF THE FORM OF GOVERNMENT AS GUARANTEED BY OUR CONSTITUTION, AND (3) ALL OTHER QUESTIONS IN RELATION THERETO THAT WOULD AID CONGRESS IN ANY NECESSARY REMEDIAL LEGISLATION

APPENDIX—PART VII

REPORT ON THE AXIS FRONT MOVEMENT IN THE UNITED STATES

FIRST SECTION—NAZI ACTIVITIES

Printed for the use of the Special Committee on Un-American Activities

UNITED STATES
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SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES,
WASHINGTON, D. C.

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ROBERT E. STRIPLING, *Secretary and Chief Investigator*
J. B. MATTHEWS, *Director of Research*

INVESTIGATION OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES

INTRODUCTION

The following report is the first section of a comprehensive digest which the committee has prepared dealing solely with the activities of Axis agents and organizations in the United States. This committee came into existence in 1938 several years after Adolf Hitler and his Nazi Party had put in motion their plan of spreading nazi-ism throughout the world. The United States was no exception to this diabolical scheme, for Hitler had already planted in our midst many of his trusted agents who were carrying on their treasonable work unmolested. Many of the legitimate and traditional German societies in the United States had already been diverted to the cause of nazi-ism. New organizations like the German-American Bund and the Kyffhauserbund were growing in strength. The Embassy and consular staffs of the Nazi Government in America were swelled with agents who were not performing their legitimate diplomatic or commercial functions but instead were engaging in espionage and propaganda activities. This committee at its first hearing in August 1938 set out to expose these agents and organizations who were serving the cause of Hitlerism. Since that time the committee has heard hundreds of witnesses, taken thousands of pages of testimony, and subpenaed voluminous records which exposed these people and destroyed their effectiveness and influence.

In releasing this section of the digest, the committee wishes to emphasize that it deals only with the agents, organizations, and "fronts" of only one of the Axis Powers, namely, the German Government. The report begins with the diplomatic agents and carries through to the individual Nazi propagandists. The purpose of the report is to serve as a handbook for the various Government agencies and the American people to acquaint them with the technique and tactics employed by the Nazis and further to identify the individuals and organizations who participated in this conspiracy.

EDWIN EMERSON

Edwin Emerson, veteran of the Spanish-American War, war and foreign press correspondent, has been proven to be an official agent of the German Government and of the German Nazi party in this country. He was investigated by the Special Committee on Un-American Activities under the chairmanship of the Honorable John McCormack as well as by this committee.

EMERSON'S BACKGROUND

Edwin Emerson was born in Dresden, Saxony, Germany, on January 23, 1869. He graduated from Harvard University and later served with Roosevelt's Rough Riders in the Spanish-American War. He has had a long career as a military observer, soldier of fortune, foreign and war correspondent throughout Central America, Venezuela, Nicaragua, and Mexico, described in his various books and articles.

Emerson resided at various times at the following addresses: 118 East Eighteenth Street, 215 East Fifteenth Street, New York City, and more recently at Belle Haven, Va.

CONNECTIONS WITH GERMANY

He was war correspondent with General Von Hindenberg at Tannenberg in 1914, with General Beseler at Antwerp, Ypres, and Warsaw and with Mackensen in Serbia, Rumania, and Macedonia in 1916.

From 1914 to 1917, Emerson was the editor of the English Continental News, published by the German Government to carry on pro-German propaganda among English-speaking soldiers during the last World War.

On April 11, 1915, Count Von Bernstoff, German Ambassador to the United States, and Emerson were in contact with each other and a letter from Emerson acknowledging a check for $1,000 was found among Von Bernstoff's papers. In November 1915 Emerson received a wire from Ambassador Bernstoff expressing regret at missing him and stating that "Paper will inform me." He has received funds from official German sources for services to the German Propaganda Bureau. On November 22, 1918, the President of Guatemala charged Emerson with being a German spy. In 1921 and 1923, Emerson was expelled from Austria and Switzerland as an undesirable alien engaged in subversive activity.

Emerson seems to have been as active in behalf of the Nazi German Government as he was in behalf of the Kaiser. In its issue for May 15, 1933, the "Amerika Deutsche Post," a pro-Nazi paper published in New York, announced that its headquarters were in room 1923 in the Whitehall Building, at 17 Battery Place. This was the office of Colonel Emerson. On August 29, 1940, the Honorable Wright Patman testified before the Special Committee on Un-American Activities that—

Colonel Edwin Emerson of New York was named the Nazi Party's representative in America * * * both by the German Consul in New York and by the

German Tourist Information Office. * * * He was one of the first to come here representing the Nazi form of government in America. He had charge of Nazi activities in 1933 and in subsequent years.

(Hearings, vol. 14, pp. 8168, 8179.)

A dispatch to the Chicago Daily News from their Berlin correspondent, Junius B. Wood, declared:

An announcement from the press section of the Nazi party that Colonel Edwin Emerson, a New York clubman, has been named representative of the party's interests in the United States, revives unpleasant memories for many Americans who served overseas during the World War.

In his testimony before the McCormack committee, Carl C. Dickey, advertising representative of the German Tourists Information, declared that Emerson had asked him to send out the pamphlet "Church and State" by Frederick Franklin Schrader, published by the Friends of Germany, 17 Battery Place, New York City. The following excerpts from this pamphlet, issued to counteract the tide of religious opposition to Hitler and his regime, will show its propagandistic nature:

Patriotic Germans take great satisfaction in the recent improvement of relations between the Church and State in the Fatherland * * * What Bismarck failed to accomplish in eight years of cultural struggle (Kulturkampf) Hitler won for his people in six months of negotiations.

Frederick Franklin Schrader was an employee of the German Consul who had carried on pro-German propaganda during the World War and had been a writer for the "American Observer," the English supplement to the pro-Nazi "Amerika Deutsche Post."

Congressman Patman testified that—

Colonel Emerson maintained a "translation and advertising bureau" in the Whitehall Building, 17 Battery Place, New York, which is also the address of the German Consul General. This happens to be the same place where the publication FACTS IN REVIEW was issued.

Emerson's aides in this enterprise were Frederick Franklin Schrader, T. St. John Gaffney, former American Consul General in Munich who was retired during the first World War because of pro-German activity, Ferdinand Hansen, Joseph J. O'Donohue, Rev. Francis Gross, and Arthur Fleming Waring (hearings, vol. 14, p. 8206).

Emerson was the director of the Friends of Germany, with offices at 17 Battery Place, New York.

Emerson was a contributor to the Deutscher Weckruf and Beobachter, official Bund organ, and arranged for Fritz Kuhn's trip to Nazi Germany (hearings, vol. 8, p. 5195).

Emerson was in close touch with Royal Scott Gulden, who organized the secret "Order of '76," William Dudley Pelley, head of the Silver Shirts, and George Sylvester Viereck, convicted Nazi propagandist. In fact, Pelley lived with Emerson for some time at the Hotel Edison in New York. Members of this group together with Carl Guenther Orgell, Emerson's secretary, and Captain Mensing of the North German Lloyd Line are reported to have had numerous parties aboard the *Europa*, the *Bremen*, and the *Deutschland*, according to testimony presented to this committee (hearings, vol. 12, pp. 7541 to 7552).

According to the testimony of William Dudley Pelley, Emerson offered to place 15,000 Germans in Pelley's Silver Legion at $10 per head, an offer which Pelley declared he refused.

In connection with its exposure of Manfred Zapp and the Transocean News Service, the committee found two pieces of correspondence with Emerson. Exhibit 122, in appendix—Part II, reads as follows:

SEPTEMBER 13, 1939.

Col. EDWIN EMERSON,
5 Edgewood Terrace, Alexandria, Va.,
Belle Haven.

DEAR SIR: According to your request I am sending you, for a month on trial our Transocean News Service.

In these times of crisis and war, the Transocean News Service is in the position to make its news reports available to individuals, interested in Central European events.

The Transocean News Service, whose headquarters are in Berlin, Germany, is a privately owned corporation, not to be confused with the DNB (Deutsches Nachrichtenbuero), Transocean specializes in Central European and Near Eastern news and has an excellent coverage of the Baltics, the Balkans, the Orient and Germany. Transocean carries all of the official government statements of Central Europe and does not permit its correspondence to color facts with individual opinion and comment.

The Transocean News Service reports, which will be issued daily, would cost $3.00 a week.

If you are interested in the Transocean News Service for your own information, please send me a note.

Very truly yours,

MANFRED ZAPP.

Subsequent to this offer from Zapp, Emerson voluntarily sent in a report to Transocean and closed his letter with a "Sieg-Heil for your Fuehrer." The letter is addressed to Tonn, Zapp's assistant.

5 EDGEWOOD TERR., BELLE HAVEN,
Alexandria, Va., September 28, 1939.

Mr. TONN,
Transocean, 341 Madison Avenue,
New York City.

DEAR MR. TONN: In accordance with my promise I am sending you a brief report about an occurrence which may have escaped your local representative, since nearly all the local papers assiduously suppressed it. It is of course understood that for such small services I do not expect any honorarium.

As I have stated orally to you, you have my sincere sympathy in the difficulties of your dangerous post. You are so constantly devoting yourself to Transocean and your fatherland that you are able to overcome attendant inconveniences.

Of your reports, which are always welcome, only two have failed to appear so far. My latest German mail arrived so mischievously rumpled that postman felt constrained to apologize for the Alexandria Post Office.

With a Sieg-Heil for your Fuehrer,

Yours,

(Signed) EDWIN EMERSON.

FRIENDS OF GERMANY

The Friends of Germany was organized in 1933 by Emerson. The Friends of New Germany, immediate predecessor of the German-American Bund, appeared on the scene shortly after the formation of Emerson's Friends of Germany.

In May 1934, the leaders of the two organizations with similar names—the Friends of Germany and the Friends of New Germany—negotiated an arrangement whereby the members of the Friends of Germany were to be admitted to the Friends of New Germany without the payment of an initiation fee. Thereupon, the Friends of Germany was dissolved.

GERMAN-AMERICAN BUND

(Amerikadeutscher Volksbund)

The German-American Bund followed closely the pattern of treason made familiar by the Nazis in such organizations as those of Norway's Quisling, Czechoslovakia's Henlein, Belgium's Degrelle, and Jugoslavia's Pavelic. Operating under the flimsy pretext of cultural objectives and general German-American welfare, the bund was always and everywhere a Nazi agency working for disruption, espionage, sabotage, and treason. The bund's pious pretenses were so shallow that it is impossible to believe that any considerable proportion of its membership was ever truly deceived concerning its objectives.

THE COMMITTEE'S INVESTIGATION

On August 12, 1938, this committee held its first public hearings. In an all-day session, the committee heard four witnesses who testified concerning the German-American Bund and its counterpart for German nationals, the German Bund.

The most important of the committee's first witnesses was Peter Gissibl, who had been active in the pro-Nazi organizations which preceded the formation of the German-American Bund and had later, for a period of more than a year, been the local leader of the bund in Chicago.

It was definitely established through the testimony of Gissibl that Fritz Kuhn had ordered the destruction of bund correspondence and membership lists in order to prevent their coming into the hands of this committee. At the very outset of its investigations, therefore, the committee was faced with the defiance and recalcitrance of the bund leaders. Nevertheless, the very act of destroying its records strongly confirmed the widely held suspicion of the subversive character and aims of the German-American Bund

During the latter half of 1938, the committee employed as an investigator a man who had become a member of the bund in order to obtain evidence of the bund's character from the inside.

The committee heard 23 witnesses on the bund in public sessions. These included some of the outstanding leaders of the bund itself.

The following is a tabulation of the witnesses who appeared before the committee in public sessions and gave testimony on the German-American Bund, together with the dates of their appearance and the

pages of the committee's hearings on which their testimony may be found:

Witness	Date of appearance	Page of committee hearing
John C. Metcalfe	Aug. 12, 1938	3–90
Peter Gissibl	do	47–72
		84–86
Frank Davin	do	72–75
James J. Metcalfe	do	75–84
John M. Sweeney	Sept. 15, 1938	1026–1037
Roy P. Monohan	Sept. 16, 1938	1081–1096
John C. Metcalfe	Sept. 28, 1938	1107–1139
Do	Sept. 29, 1938	1141–1162
Do	Sept. 30, 1938	1163–1180
Do	Oct. 5, 1938	1203–1219
Arnold Gingrich	Oct. 6, 1938	1221–1237
John C. Metcalfe	Nov. 5, 1938	2117
Bernhard Hoffman	do	2118–2129
LeRoy Schulz	do	2129–2142
John C. Metcalfe	Nov. 15, 1938	2235–2246
Do	Nov. 16, 1938	2287–2288
Do	Nov. 19, 1938	2340–2363
Do	Nov. 21, 1938	2366–2389
Theodore Graebner	Dec. 9, 1938	3004–3015
John C. Metcalfe	Dec. 14, 1938	3025–3027
Fritz Kuhn	Aug. 16, 1939	3705–3814
Do	Aug. 17, 1939	3815–3889
Helen Vooros	Aug. 18, 1939	3891–3942
		3946–3960
John C. Metcalfe	do	3942–3946
Henry D. Allen	Aug. 22, 1939	3971–4044
Do	Aug. 24, 1939	4086–4179
Robert B. Barker	Aug. 28, 1939	4181–4237
Do	Aug. 29, 1939	4239–4268
Gerhart H. Seger	Sept. 25, 1939	5175–5203
Neil Howard Ness	Oct. 5, 1939	5489–5506
Do	Oct. 6, 1939	5511–5530
Fritz Kuhn	Oct. 19, 1939	6043–6124
Richard T. Forbes	Oct. 21, 1939	6185–6211
Gerhard Wilhelm Kunze	Oct. 1, 1940	8251–8283
August Klapprott	Oct. 2, 1940	8285–8307
Arthur H. Bell	do	8307–8313
A. M. Young	do	8313–8318
Otto Hohner	do	8318–8323
Herman A. Ries	do	8323–8330
Richard W. Werner	Oct. 4, 1940	8331–8388

In addition to the foregoing witnesses who were heard in public sessions of the committee, 56 other witnesses were heard on the bund in executive sessions of the committee.

For several months the committee employed special investigators who were acquainted with the German language. These investigators spent their entire time in examining the publications of the German-American Bund, particularly the Deutscher Weckruf und Beobachter, which was the bund's official organ.

THE COMMITTEE'S REPORTS ON THE BUND

In its first report to the House of Representatives in January 1939, this committee dealt at length with the German-American Bund. (See pp. 91–113 of that report.) The same was done in subsequent annual reports to the House.

In January 1941, the committee issued a special report of 178 pages dealing exclusively with the bund. This report is known as Appendix—Part IV. This report was introduced by the prosecution in the recent trial of bund leaders in New York, a trial which resulted in the conviction of all the defendants. In this report, based largely upon documents obtained from the personal effects of Gerhard Wilhelm Kunze, the committee found the following things:

1. That the bund was characterized by the same ruthless efficiency of the military set-up which characterized Hitler's machine in Germany.
2. That bund members were subjected to "absolute loyalty" and "blind obedience" to the bund's fuehrer.
3. That the bund demanded that its members be "fanatical fighters" for national socialism.
4. That the bund anticipated the necessity of violence in carrying out its program.

5. That the bund was characterized by extreme religious bigotry.

6. That the bund aimed at the establishment of a new kind of government in the United States, one which should incorporate the principle of Nazi religious bigotry.

7. That the bund kept a systematic record of its enemies.

8. That the bund specified that its meetings should be closed with the following declaration: "To a free, Gentile-ruled United States and to our fighting movement of awakened Aryan Americans, a threefold rousing 'Free America! Free America! Free America!' "

9. That the bund was an absolutely secret organization.

10. That the bund looked upon all Americans of German descent as owing loyalty to the Reich.

11. And that the bund was ideologically and organizationally tied to Nazi Germany.

OUTLINE OF THE BUND'S HISTORY

Tracing the organizational background of the German-American Bund briefly, we find the following stages:

(1) The first definitely Nazi group organized on American soil was formed in Chicago in October 1924. The group was known as Teutonia and its founder was Fritz Gissibl. Gissibl, who was an alien, at the time, later became a member of the National Socialist German Labor Party (the full English title of the Nazi Party in Germany). He was born in Nuremberg, Germany, and came to the United States in December 1923. A period of only 10 months elapsed between time of his arrival in this country and the time of his forming Teutonia. He made no secret of his allegiance to Adolf Hitler. Gissibl was a printer by trade and was employed on the Chicago Daily News until his Nazi activities were publicly exposed. According to Gissibl's sworn statements, Teutonia never had more than 50 members in Chicago. In 1931, a branch of Teutonia was formed in Detroit. The Detroit branch was still smaller, having an approximate membership of 12. The leader of the Detroit branch of Teutonia was one Walter Hentschel. Hubert Schnuch succeeded Fritz Gissibl as leader of the Chicago branch of Teutonia. According to Gissibl, Teutonia was disbanded in 1932. Approximtely 1 year later, most of the members of Teutonia joined the Friends of New Germany. Peter Gissibl, Fritz's brother, and Hubert Schnuch both testified that Teutonia was the forerunner of the Friends of New Germany.

(2) Between the time of the dissolution of Teutonia and the time of the formation of the Friends of New Germany, approximately 1 year elapsed. During that interim of 1 year, locals of the National Socialist German Labor Party were organized in Chicago and Detroit. A local of the Nazi Party had previously been organized in New York City. In April 1933, on orders from Rudolf Hess, deputy leader of the Nazi Party in Germany, these American locals of the National Socialist German Labor Party were disbanded.

(3) In July 1933, the Friends of New Germany was formed in Chicago. According to Fritz Gissibl, "the left-overs of the former Nazi Party and their friends" sent delegates to Chicago for the purpose of setting up the Friends of New Germany. The Chicago

convention elected Heinz Spanknoebel as leader and Fritz Gissibl as deputy leader of the new organization. New York City was chosen as the seat of the organization's national headquarters. Spanknoebel, a photoengraver by trade, claimed that he was a clergyman at the time he entered the United States. At the public hearings of the McCormack committee (Special Committee on Un-American Activities) on June 6, 1934, a letter from Heinz Spanknoebel to Walter Kappe was introduced in evidence. This letter read, in part, as follows:

> First of all, confidentially, for technical reasons my commission must continue as leader of the defense and enlightenment in the U. S. A., for which also the necessary funds have been appropriated. * * * Our office here leans closely on the consul general, and at present, I am occupied with negotiations and with furnishing the office. * * * Have full authorizations from the Supreme Party Office as well as from the Ministry for Propaganda.

This letter was dated July 6, 1933.

(4) On December 1, 1935, Fritz Kuhn became the head or fuehrer of the Friends of New Germany. In March 1936, in Buffalo, the Friends of New Germany became the German-American Bund and Fritz Kuhn was made its leader. Kuhn remained as leader until December 1939, when he was convicted of the misuse of the funds of the organization. Gerhard Wilhelm Kunze thereupon succeeded Kuhn as the bund's fuehrer.

FRITZ KUHN

Fritz Julius Kuhn was born in Munich, Germany, on May 15, 1896. According to his own testimony, he received his education in Munich, completing a university course there.

In the First World War Kuhn was a machine gunner in the infantry of the German Army. He states that he served 4½ years with the German forces, and by the end of the war had attained the rank of lieutenant.

Kuhn's brother, Max, was appointed a member of the German Supreme Court by Hitler—sufficient evidence that the Kuhn family stands in well with the Nazi Fuehrer.

When Kuhn was a witness before the Special Committee on Un-American Activities, he stated that he had never at any time been a member of the National Socialist Party in Germany. However, his testimony on this point was in conflict with a statement which appeared in the official publication of the Friends of New Germany, the Nazi organization which preceded the German-American Bund. In this publication, a picture of Kuhn was carried in the issue of December 30, 1935. Kuhn, who had just become the recognized national leader of the Nazi element among Germans in this country, was introduced to his Nazi followers with the following statement:

> Mr. Fritz Kuhn became a member of the Nazi Party in 1921 and was active under the then Munich police commissioner, one of the first leading Nazi officials, Dr. Pochner.

Kuhn further testified before the Special Committee on Un-American Activities that he had had no part in the Munich beer hall putsch of November 9, 1923. This, too, was in direct conflict with the statement which appeared under his picture in the Friends of New Germany paper of December 30, 1935, which declared:

When on November 9, 1923, in front of the Feldherrenhalle in Munich, Bavarian police shot at the Nazis marching under the leadership of Hitler and Ludendorff, Kuhn was among the marching Nazis.

Whether Kuhn committed perjury on the foregoing questions when he was a witness before the committee, or whether the Nazi newspaper deliberately falsified his record and background, the committee is not in a position to state. One thing is certain, however, and that is that the Friends of New Germany desired very much to present itself as a bona fide Nazi organization by correctly or falsely, as the case may be, introducing its fuehrer as one of the original and devoted followers of Adolf Hitler.

Kuhn entered the United States at Laredo, Tex., on or about May 18, 1927. Prior to that date, he claims to have had a residence of about 3 years in Mexico.

After his entry into the United States, Kuhn proceeded directly to Detroit, where he obtained employment in the Henry Ford Hospital and later as a chemical engineer in the Ford Motor Co. Kuhn's employment in these Ford institutions lasted about 8 years.

Kuhn was naturalized in Detroit on December 3, 1934.

Prior to his naturalization, Fritz Kuhn became a member of the Friends of New Germany, the Nazi organization which was the predecessor of the German-American Bund. Kuhn was, in fact, the local unit leader of the Friends of New Germany in Detroit. It is, therefore, apparent that, wholly apart from other evidence, Kuhn's loyalty was to Nazi Germany at the very time that he took out his final citizenship papers in the United States. Almost 3 years later, Kuhn made it unequivocally clear that his American citizenship had not interfered with his loyalty to Nazi Germany. In his bund newspaper, Deutscher Weckruf und Beobachter, for April 22, 1937, Kuhn wrote as follows:

We may have various citizenship papers in our drawers, but we are all Germans and part of the great German nation of a hundred million people.

The German-American Bund was formally launched at a national convention held in Buffalo, N. Y., in March 1936. Kuhn testified before the Special Committee on Un-American activities that he personally called this convention together. He was made bundesfuehrer (bund leader) of the new organization. Subsequently, Kuhn became head of three subsidiary or affiliated organizations. They were the German-American Business League, the A. V. Publishing Corporation, and the A. V. Development Corporation. (The initials A. V. Stand for the German title of the bund which is Amerikadeutscher Volksbund).

In the Deutscher Weckruf und Beobachter, official bund newspaper, the visit of Kuhn and a delegation of German-American Bund storm troopers to Germany was described with obvious pride in both words and pictures. The accounts of this visit, which took place in 1936, are found in the Deutscher Weckruf and Beobachter for August 6, August 27, and September 10, 1936. When these bund storm troopers paraded in Berlin before Hitler himself, the Nazi Feuhrer stood on the balcony of the Chancellory. As Hitler stood there viewing this parade, Fritz Kuhn went to the balcony and, according to the words of the Deutscher Weckruf und Beobachter itself, "Bund Leader Fritz Kuhn reported to him." The German text of this episode

is as follows: "Auf dem Balkon der Reichskanzlei stehend, nahm Reichskanzler Hitler den Vorbeimarsch ab, Bundesfuehrer Fritz Kuhn erstattet ihm Meldung." It cannot be denied that Hitler in this manner gave the highest official recognition of the fact that the German-American Bund was a Nazi agency and that Bundesfuehrer Fritz Kuhn was a subordinate of Hitler himself. According to the report which was published in the bund's own newspaper, Hitler replied to Kuhn, "Now you go back and continue your struggle."

Fritz Kuhn permitted himself to be described as "the American Henlein" in the Deutscher Weckruf und Beobachter of August 31, 1939. The treasonable role of Henlein in Czechoslovakia is, of course, a matter of public record. Kuhn's career as leader of the German-American Bund and the record of the bund itself fit perfectly the pattern made familiar by Quisling in Norway, Degrelle in Belgium, and Henlein in Czechoslovakia.

From March 1936, until he was sent to prison, Kuhn occupied the position of bundesfuehrer in the German-American Bund. In the organization, his word was law. In November 1939, Kuhn was convicted of misuse of the funds of the German-American Bund and was committed to prison shortly thereafter.

Fritz Kuhn was a witness before the Special Committee on Un-American Activities on August 16 and 17, and October 19, 1939. The transcript of his testimony may be found on pages 3705–3889 and 6043–6124 of the committee's published hearings.

GERHARD WILHELM KUNZE

Gerhard Wilhelm Kunze was born in Camden, N. J., on January 10, 1906.

According to his testimony before the Special Committee on Un-American Activities, Kunze's formal education extended through high school. He also received electrical and mechanical training in various night schools.

By occupation, Kunze was a chauffeur-mechanic and electrician up until his full-time employment with the German-American Bund.

Kunze states that he joined the Friends of New Germany in September 1933 and that he was a member of the convention which founded the German-American Bund at Buffalo, N. Y., in March 1936. From the formation of the Bund until August 1937 Kunze was employed by the German-American Bund in Philadelphia. From November 1937 until April 1939 he worked with the German-American Bund in New York on a volunteer basis. From April 1939 until the entry of the United States into the war in December 1941 Kunze was employed on a salary basis by the German-American Bund.

Kunze's position with the bund prior to the imprisonment of Fritz Kuhn was that of national public relations director. After Kuhn was convicted and sent to prison, Kunze became acting national bundesfuehrer of the German-American Bund. His term of acting bundesfuehrer extended from December 5, 1939, to September 1, 1940. On the latter date, Gerhard Wilhelm Kunze became national bundesfuehrer of the German-American Bund and continued in that capacity until the entry of the United States into the war in December 1941.

After the United States entered the war, Kunze fled to Mexico with the alleged intention of making an escape to Germany. In July 1942 he was apprehended by the Mexican authorities, taken to the border, where he was picked up by United States authorities and flown to New York. Kunze has been convicted on several counts including espionage.

Gerhard Wilhelm Kunze was a witness before the Special Committee on Un-American Activities on October 1, 1940. The transcript of his testimony may be found on pages 8251–8283 in the committee's published hearings.

PETER GISSIBL

Peter Gissibl was born in Germany on October 2, 1900. He landed in the United States on May 10, 1923, and became a naturalized citizen of this country on April 29, 1929.

In February 1925 Gissibl joined the Teutonia Society, one of the Nazi predecessors of the German-American Bund. Gissibl was also a member and an official in the Friends of New Germany (organized in May 1933 and dissolved at the time of the formation of the German-American Bund in March 1936).

Peter Gissibl was president of the German-American Business League (Deutscher Konsum Verband), an auxiliary of the German-American Bund. He was also president of the Teutonia Publishing Co., and president of the Concordia Male Chorus.

From May 1, 1937, until May 18, 1938, Peter Gissibl was local unit leader of the German-American Bund in Chicago, a position which he states that he resigned on the latter date because of disagreements with Fritz Kuhn.

Peter Gissibl's brother, Fritz, was the founder of the Teutonia Society and later the national president of the Friends of New Germany.

Peter Gissibl was a witness before the Special Committee on Un-American Activities on the first day of the committee's taking testimony at public hearings, which was on August 12, 1938. The transcript of his testimony may be found on pages 47–72 and 84–86 of the committee's published hearings.

AUGUST KLAPPROTT

August Klapprott was born in Germany on September 4, 1906. He came to the United States in 1927 and was naturalized in 1934.

For 10 years after his arrival in the United States, Klapprott worked as a bricklayer. From May 1937 until January 1940 he operated a restaurant in Nordland, N. J. In January 1940 he became a full-time salaried employee of the German American Bund.

Klapprott states that he was a member of the Friends of New Germany for a period of 2 years prior to the formation of the bund. He joined the German-American Bund at the time of its formation in March 1936.

Klapprott's position in the bund was that of eastern department leader. In the whole of the United States, the German-American Bund has three departments, the eastern, the middle western, and the western. Klapprott's territory extended from Maine to Florida and included the inland States of Vermont and West Virginia.

August Klapprott is now under indictment for conspiracy to interfere with the operation of the Selective Service Act.

Klapprott was a witness before the Special Committee on Un-American Activities on October 2, 1940. The transcript of his testimony may be found on pages 8285–8307 of the committee's published hearings.

MEETING PLACES OF THE BUND

Among the meeting places of the German-American Bund, located by the committee, were the following:

California:
- Los Angeles, Deutsches Haus, 634 West Fifteenth Street.
- Oakland, Hermannsohn's Park, Dublin Canyon.
- San Gabriel, Grape Vine Cafe.

Connecticut:
- Norwalk, South Norwalk Quartette Club, 11 River Street.
- Southbury, Camp General von Steuben.
- Stamford, Liedertafel Halle, 45 Greyrock Place.

Illinois: Chicago, Germania Klubhaus, 108 Germania Place.

Maryland: Baltimore, Deutsches Haus.

Pennsylvania: Philadelphia, Philadelphia Turnhalle, Broad Street and Columbia Avenue.

New Jersey:
- East Rutherford, Old Heidelberg Restaurant, Paterson Avenue.
- Fairfield, "Deutsches Eck," Route No. 6.
- Hackensack, Uhland Halle, 333 Main Street.
- Irvington, Emanuels Church, Ney Avenue.
- Newark, Apollo Hall.
- North Bergen, Schuetzenpark-Saal, Hackensack Plankroad and Hudson Boulevard.
- Passaic, Turn Hall, 240 Hope Avenue.
- Riverdale, Edelweiss Restaurant, Riverdale Road.
- Springfield, Immergruen Park.
- Union City, German American Bund Home, 754 Palisade Avenue.

New York:
- Astoria, Broadway Tavern, 30–09 Broadway.
- Astoria, Long Island Turnhalle, 44–01 Broadway.
- Astoria, Steubenhaus.
- Bardonia, Siegmund Restaurant.
- Bronx, Ebling's Casino, One Hundred and Fifty-sixth Street and St. Ann's Avenue.
- Brooklyn, O. D. Home, St. Nicholas Avenue.
- Brooklyn, Prospect Hall, 261 Prospect Avenue.
- Brooklyn, Woodward Inn, 675 Woodward Avenue.
- Buffalo, Tanglewood Park.
- College Point, Long Island, Columbia Hall, Eighteenth Avenue and One Hundred and Twenty-first Street.
- Four Corners, Cardinal Lunch, Route No. 59.
- Franklin Square, Long Island, Plattdeutscher Volksfest Park.
- Grant City, Staten Island, Privacky's Grant City Park at Midland Avenue near Hylan Avenue.
- Harrison, Scholz' Farm, 35 Harrison Avenue.
- Hempstead, Long Island, Polish Hall.
- Hewlett, Long Island, Castle Inn, 1218 Broadway.
- Jamaica, Long Island, Jamaica Saengerbund Halle, 168–15 Ninety-first Avenue.
- Kitchawan, Cuno Country Club.
- Lindenhurst, Long Island, Washington Hall, North Wellwood Avenue.
- New Hyde Park, Long Island, Brauhof.
- New Rochelle, Alps Rest, 240 Huguenot Street.
- New Rochelle, Welmot Inn, Welmot Road Corner.
- New Rochelle, Grabs Hall, 18 Mechanic Street.
- New York City, L. Armbruster, Inc., 1409 Third Avenue.
- New York City, Jaeger's Turnhall, Eighty-fifth Street and Lexington Avenue.

New York—Continued.
New York City, Yorkville Casino, 210 East Eighty-sixth Street.
Ridgewood, Long Island, New Ridgewood Hall, 1880 Menahan Street.
Rockland County, North Mountain Casino.
Schenectady, Wenzel's Park, end of Campbell Avenue.
Stapleton, Staten Island, Atlantic Rotisserie, 191 Canal Street.
Stapleton, Staten Island, Stapleton Lyceum, 730 Van Duzer Street.
Staten Island, Alma Guenther Restaurant.
Suffern, Fesel's Pavillion.
Troy, Germania Hall.
White Plains, 101 Main Street.
White Plains, Fritz Restaurant, East Post Road.
Woodside, Long Island, Steuben House.
Yonkers, Polish Community Center.
Washington: Seattle, Deutsches Haus.
Wisconsin:
Grafton, Camp Hindenburg.
Milwaukee, Republican Hotel, Third Street and Kilbourne Avenue.

LEADERS OF THE BUND

While it was impossible for the committee to obtain a complete list of the bund's membership because Kuhn had ordered the destruction of all membership lists, the committee has been able to identify many, if not all, of the leaders of the German American Bund. The following is a list of bund leaders from coast to coast who were publicly active in the organization's affairs:

Ach, Karl, group leader of the bund in local New York.
Adrian, Else, leader of the girls' section of the bund in local New York, and selected by the bund for training in Stuttgart, Germany.
Andling, Paul, leader of the bund in Schenectady, N. Y.
Bachman, Karl, leader of the bund in local Albany, N. Y.
Bauer, William P., leader of the bund in San Diego, Calif.
Biedl, Franz, bund treasurer in local New York.
Biele, N., head of the bund storm troopers in Philadelphia, and head of bund Camp Deutschhorst at Sellersville, Pa.
Boening, William, leader of the bund storm troopers in Astoria, Long Island, N. Y., and alternate leader of the storm troopers for the eastern district of the bund.
Bojes, Frank, leader of the bund, local Stapleton, Staten Island.
Borchers, Walter, leader of the bund, local South Brooklyn, N. Y.
Brauns, Georg, leader of the bund, local Hudson County, N. J.
Budelmann, John, local leader of the bund, Bergen County, N. J.
Claasen, Bernard, leader of the bund in Hammond, Ind.
Cyler, Leo, leader of the bund in Lindenhurst, Long Island.
Detleff, John, acting district leader of the bund in Hempstead, Long Island.
Diebel, Hans, member of the bund in Los Angeles, and head of the Aryan Book Shop in Los Angeles.
Dinkelacker, Mrs. Erna, head of the youth camps of the bund.
Dinkelacker, Theodor, youth leader of the bund.
Dittrich, Diego, leader of the bund orchestra in Seattle, Wash.
Duell, Elizabeth, member of the bund and leader of the girls' group of the bund in Newark, N. J.
Eigenberger, Frederick, leader of the bund in Sheboygan, Wis.
Faigle, Gotthief, leader of the bund in Yonkers, N. Y.
Faller, Mrs. Anna, leader of the bund girls' group in Kenosha, Wis.
Flick, Karl, leader of the storm troopers of the bund for the Brooklyn district.
Foch, Matthias, district leader of the bund in Santa Barbara, Calif.
Folger, Duncan, head of the bund in New Rochelle, N. Y.
Frischkorn, Paul, leader of the bund in Detroit, Mich.
Fritz, William Jacob, leader of the bund in Toledo, Ohio.
Froboese, George, head of the midwestern district of the bund.
Fuchs, Anton, head of the bund in Pittsburgh, Pa.
Funk, Rudolf, leader of the youth section of the bund in Astoria, Long Island, N. Y.

Gaenger, Peter, head of the propaganda section of the bund in Pittsburgh, Pa.
Gissibl, Fritz, founder of the Teutonia and national president of the Friends of New Germany, both of which organizations were predecessors of the German-American Bund.
Gissibl, Peter, head of the bund in Chicago, Ill., and president of the Deutscher Konsum Verband, a subsidiary of the German American Bund.
Gloeckler, Hedwig, district leader of the bund in Hudson County, N. J.
Goeppel, Allen, leader of the bund in Pittsburgh, Pa.
Goetz, Susie, chief of the bund's news service.
Greis, H., district leader of the bund in New Haven, Conn.
Haas, Hugo, leader of the bund in Brooklyn and active in the bund's youth section; went to Germany to work in the League of Germans Living Abroad.
Haertel, Mrs. Elli, leader of the German Language School of the bund in Staten Island, N. Y.
Hagebusch, Ereka, youth leader of the girls' section of the bund at Camp Nordland, N. J., and leader of the bund's youth section in Astoria, Long Island, N. Y.
Hartman, Alexander H., leader of the bund in Philadelphia, Pa.
Hauck, H., leader of the bund in Jamaica, Long Island, N. Y.
Hayser, Elizabeth, leader of the bund in Milwaukee, Wis.
Heimsoth, Henri, leader of the bund in Kenosha, Wis.
Hein, Gottlieb, district leader of the bund in Oakland, Calif.
Heise, Anna, leader of the women's section of the bund in Brooklyn, N. Y.
Heise, Kurt, district leader of the bund in Long Island, N. Y.
Heller, William, leader of the bund in Poughkeepsie, N. Y.
Hesse, Karl, district leader of the bund in Spokane, Wash.
Hoeflich, Hermann J., leader of the bund in Rockland County, N. Y.
Hutten, H., district leader of the bund in Staten Island, N. Y.
Kappe, Walter, recently resigned from the German Army in which he is a lieutenant in order to become the head of a sabotage ring for the United States, and formerly a member of the bund in New York where he was the editor of the Deutscher Weckruf und Beobachter, official organ of the German-American Bund.
Kessler, Martin, district leader of the bund in Cleveland, Ohio.
Klapprott, August, leader of the bund in New Jersey.
Klapprott, Mrs. August, leader of the girl's group of the bund in New Jersey.
Koch, Tilly, leader of the youth movement of the bund in South Brooklyn, N. Y.
Koehler, Konrad, business manager of the Deutscher Weckruf und Beobachter, official organ of the bund.
Kohler, Matthias, local leader of the bund in Newark, N. J.
Kuehn, E. F., leader of the bund in Petaluma, Calif.
Kuhn, Fritz, national leader (fuehrer) of the German American Bund and all of its subsidiaries.
Kullman, Paul, local leader of the bund in Wyomissing, Pa.
Kump, Fred, head of the bund in Glendale, Long Island, N. Y.
Kunze, Mrs. A., leader of the women's section of the bund in New Milford, Bergen County, N. J.
Kunze, G. Wilhelm, successor to Fritz Kuhn as national leader (fuehrer) of the bund and its subsidiaries.
Lage, Henry, head of the bund in San Francisco, Calif.
Lattemann, W., head of the bund in Schenectady, N. Y.
Lechner, H., district leader of the bund in Seattle, Wash.
Leibiger, Gustav, district leader of the storm troopers of the bund in Westchester County, N. Y., and Connecticut.
Liebler, Fred, local leader of the bund in Jamaica, Long Island, N. Y.
Liedertafel, P. Kohl, local leader of the bund in St. Louis, Mo.
Luedtke, Willy, national officer of the bund.
Lutz, John, local leader of the bund in San Diego and San Francisco, Calif.
Markmann, Rudolf, district leader of the bund for the eastern part of the United States.
Martin, Rudolph, district leader of the bund for the eastern part of the United States.
Martin, Theo, local leader of the bund in Philadelphia, Pa.
Mettin, Richard, part owner of the Deutscher Weckruf und Beobachter, official organ of the bund.
Meyer, Hans, leader of the storm troopers of the bund in New York.

Meyer, Lieselotte, head of the girl's section of the bund in Lindenhurst, Long Island, N. Y.
Muehlke, Frank, treasurer of the bund in San Diego, Calif.
Mueller, Albert, leader of the bund in St. Louis, Mo.
Mueller, Ernst, head of the bund in Camp Siegfried, Yaphank, Long Island, N. Y.
Munk, George, head of the bund in Stamford, Conn.
Nadler, Elly, leader of the girl's group of the bund in White Plains, N. Y.
Nuebeck, Hans, district leader of the bund in Buffalo, N. Y.
Nicolay, Carl, propaganda leader of the bund.
Nicolay, Franz, leader of the youth section of the bund in South Brooklyn, N. Y.
Orgel, Helen, head of the women's section of the bund in Los Angeles, Calif.
Othmer, Waldemar, leader of the bund in Trenton, N. J.
Pollmann, Mrs. M., head of the women's section of the bund in Hudson County, N. J.
Purwien, H., local leader of the bund in South Bend, Ind.
Rehfeldt, Anna, national leader of the women's group of the bund.
Reese, Edward, leader of the bund in Spokane, Wash.
Reisberger, George, treasurer of the bund in the Bronx, N. Y.
Rheinberg, Ulrich, dramatic director of the bund.
Rieper, Jacob, head of the bund in White Plains, N. Y.
Risse, Arno, district leader of the bund in Los Angeles, Calif.
Rompe, Hans, local leader of the bund in Lindenhurst, Long Island, N. Y.
Ruhnke, William, leader of the bund in Dayton, Ohio.
Sahling, Werner, head of the boys' section of the bund in New York.
Schaphorst, Henry, local leader of the bund in Fort Wayne, Ind.
Schattat, Fred, local leader of the bund in Gary, Ind.
Scheurer, Hans, local leader of the bund in Portland, Oreg.
Schnoes, E., treasurer of the bund in the Bronx, N. Y.
Schrader, Frederic F., editor of the Deutscher Weckruf und Beobachter, official organ of the bund.
Schreiber, John H., local leader of the bund in Detroit, Mich., and Toledo, Ohio.
Schrick, Michael, head of the storm troopers of the bund in New York.
Schuster, Josef, district leader of the bund in New York.
Schwarzmann, H., district leader of the storm troopers of the bund for the eastern part of the United States.
Schwinn, Hermann, district leader of the bund in Los Angeles, Calif.
Seegers, Henry, leader of the bund in West Reading, Pa.
Seidel, Erich, organizer of the bund in Glendale, Long Island, N. Y.
Stoll, Paul, local leader of the bund in Seattle, Wash.
Sturn, Erna, leader of the women's group of the bund in Astoria, Long Island, N. Y.
Toener, Rudolf, district leader of the bund in Los Angeles, Calif.
Ullrich, Reinhart, head of the bund in Pittsburgh, Pa.
Vandenberg, Frederick, youth leader of the bund in Camp Siegfried, Yaphank, Long Island, N. Y.
Van den Bergh, Bertha, head of the women's section of the bund in South Brooklyn, N. Y.
Vanderbergh, Frank, local leader of the bund in Brooklyn, N. Y.
Voch, Matthias, leader of the bund in Santa Barbara, Calif.
Von Holt, Henry, local leader of the bund in the Bronx, N. Y.
Von Nasse, Eberhard, founder of the youth section of the bund.
Wagner, Carl, leader of the bund in Passaic County, N. J.
Wagner, Henry, acting head of the bund in Brooklyn, N. Y.
Wax, M., local leader of the bund in Cleveland, Ohio, and Cincinnati, Ohio.
Wegener, Otto, head of the National News Service of the bund.
Weider, Ernest, youth leader of the bund in South Brooklyn, N. Y.
Weiler, Karl, district leader of the bund in Nassau County, N. Y.
Weis, August, treasurer of the bund's Camp Siegfried.
Wheeler-Hill, James, district leader of the bund in New York.
Wieda, A., treasurer of the bund in South Brooklyn, N. Y.
Willmovski, Albert, leader of the bund in South Bend, Ind.
Willumeit, Otto, head of the bund in Chicago, Ill.
Winterscheidt, Clara, leader of the women's section of the bund in New York.
Wolter, A. H., secretary of the bund in Pittsburgh, Pa.
Wuest, Karl, group leader of the storm troopers of the bund in New York.
Zimmer, Albert, leader of the bund in Cincinnati, Ohio.
Zimmerman, Hans, head of propaganda section of the bund in New York.

There were various subsidiary organizations directly affiliated, or otherwise connected, with the German-American Bund. Among them were—

GERMAN-AMERICAN BUSINESS LEAGUE

(Deutscher Konsum Verband)

The German-American Business League was a subsidiary of the German-American Bund. Fritz Kuhn was head of both organizations. (See p. 3709 of the committee's hearings.)

The committee has a complete membership list of the German-American Business League for New York and New Jersey.

A. V. DEVELOPMENT CORPORATION

The A. V. Development Corporation was also a subsidiary of the German-American Bund. Fritz Kuhn was president of the A. V. Development Corporation. (See p. 3709 of the committee's hearings.)

A. V. PUBLISHING CORPORATION

The A. V. Publishing Corporation was a subsidiary of the German-American Bund. Fritz Kuhn was president of the corporation. (See p. 3709 of the committee's hearings.)

The A. V. Publishing Corporation published the bund's New York newspaper, the Deutscher Weckruf und Beobachter.

PROSPECTIVE CITIZENS' LEAGUE

The Prospective Citizens' League was an auxiliary of the German-American Bund. (See p. 3755 of the committee's hearings.)

The ostensible purpose of the Prospective Citizens' League was to provide a method whereby those who had not yet taken out their final citizenship papers could nevertheless be actively associated with the German-American Bund.

GERMAN-AMERICAN SETTLEMENT LEAGUE

The German-American Settlement League was the holding corporation for the German-American Bund's camp at Yaphank, Long Island. This camp was known as Camp Siegfried.

Fritz Kuhn was one of the directors of the German-American Settlement League. (See p. 3758 of the committee's hearings.)

GERMAN-AMERICAN BUND AUXILIARY

The German-American Bund Auxiliary was the holding corporation for the bund's camp in New Jersey, Camp Nordland. (See p. 3759 and p. 8265 of the committee's hearings.)

August Klapprott, eastern leader of the bund, was president of the German-American Bund Auxiliary.

FRIENDS OF NEW GERMANY

The Friends of New Germany (Bund der Freunde des Neuen Deutschland) was the immediate forerunner of the German-American Bund.

The Special Committee on Un-American Activities which was headed by the Honorable John McCormack made a complete investigation and exposure of the Friends of New Germany from its beginning down to 1934. This committee took up the investigation where the McCormack left off.

In March 1936 the Friends of New Germany became the German-American Bund. The change from the one to the other was effected at a convention held in Buffalo, N. Y.

NATIONAL SOCIALIST GERMAN LABOR PARTY

In 1932 and 1933, locals of the National Socialist German Labor Party were organized in a number of American cities—New York, Chicago, Detroit, Los Angeles, San Francisco, and Cincinnati.

In April 1933, Rudolf Hess, Deputy Fuehrer of the Nazi Party in Germany, ordered the dissolution of these Nazi locals in the United States.

Many of those who had been prominent in the formation of these Nazi locals in the United States met in Chicago in the summer of 1933 and formed the Friends of New Germany which in turn became the German-American Bund.

After Rudolf Hess dissolved the Nazi locals in America in 1933, it was believed by many that the Nazi Party, as such had disappeared from American soil. This belief was held for a number of years until 1940 when this committee uncovered documentary evidence of the existence of a well-organized and secret Nazi Party in the United States.

In November 1940 the committee published extensive evidence of the existence of this secret Nazi Party in America. (That evidence may be found on pp. 1034–1044 and 1262–1287 of appendix, pt. II, which is entitled "A Preliminary Digest and Report on the Un-American Activities of Various Nazi Organizations * * *", etc.)

The committee discovered that F. Draeger who was consul in New York also bore the title of district leader (Kreisleiter) of the Foreign Organization of the National Socialist German Labor Party (Nazi).

CUMULATIVE INDEX

TO

PUBLICATIONS

OF THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

1938–1954

AUGUST 1962

Prepared and released by the
MMITTEE ON UN-AMERICAN ACTIVITIES, U. S. HOUSE OF REPRESENTATIVES
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COMMITTEE ON UN-AMERICAN ACTIVITIES

United States House of Representatives

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CUMULATIVE INDEX TO PUBLICATIONS OF SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES (DIES COMMITTEE), AND THE COMMITTEE ON UN-AMERICAN ACTIVITIES, 1938 THROUGH 1954, INCLUSIVE.

This is a cumulative index to individuals, publications, and organizations referred to in printed hearings and reports of the committee for the years 1938 through 1954.

The fact that a name appears in this index is not per se an indication of a record of subversive activities. It simply indicates that said individual, publication, or organization has been mentioned in connection with testimony or a report submitted. A careful check of the references in the text of the report or hearing itself will determine the circumstances under which such person, publication, or organization is named.

Key to symbols

Symbol	Publication	Date	Pagination
	SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES (DIES COMMITTEE) PUBLIC HEARINGS		
a-----	Vol. 1	Aug. 12, 13, 15–20, 22, 23, 1938.	1–979
a-----	Vol. 2	Sept. 15–17; Oct. 4–6, 11–13, 17–22, 1938.	981–1714
a-----	Vol. 3	Oct. 24–27; Nov. 4–6, 14–17, 19, 21, 1938.	1715–2426
a-----	Vol. 4	Nov. 19, 22, 23, 28; Dec. 1, 5–9, 14, 1938.	2427–3139
a-----	Vol. 4 (Supplement)	Dec. 15, 1938	3141–3178
a-----	Vol. 5	May 18, 22–24, 31; June 1, 1939.	3179–3704
a-----	Vol. 6	Aug. 16–18, 21–24, 28, 29, 1939.	3705–4274
a-----	Vol. 7	Sept. 5–9, 11–13, 1939.	4275–4939
a-----	Vol. 8	Sept. 18–20, 22, 23, 25, 27, 1939.	4941–5257
a-----	Vol. 9	Sept. 28–30; Oct. 5–7, 9, 11, 13, 14, 1939.	5259–5823
a-----	Vol. 10	Oct. 16–21, 23–25, 28, 1939.	5825–6456
a-----	Vol. 11	Oct. 28, 30, 31; Nov. 1–3, 27, 29, 30; Dec. 1–3, 1939.	6457–7199
a-----	Vol. 12	Feb. 7, 8, 10; Mar. 25, 28, 29; Apr. 2–4, 1940.	7201–7672
a-----	Vol. 13	Apr. 11, 12, 19, 23–25; May 6, 8, 9, 21, 1940.	7673–8161

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES (DIES COMMITTEE) PUBLIC HEARINGS—Continued		
a	Vol. 14	Aug. 29; Oct. 1, 2, 4, 1940; May 21, 22, 26, 27, 29; June 10, 12; Aug. 11, 1941.	8163–8832
a	Vol. 15	June 8–12, 15–18; July 1–3, 6, 7, 1943.	8833–9755
a	Vol. 16	Nov. 29, 30; Dec. 1, 6–9, 20, 1943.	9757–10210
a	Vol. 17	Sept. 27–29; Oct. 3–5, 1944.	10211–10387
	SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES (DIES COMMITTEE) REPORTS		
aa	House Report No. 2. Annual Report.	Jan. 3, 1939	1–124
ab	House Report No. 1476. Annual Report.	Jan. 3, 1940	1–25
ac	House Report No. 1. Annual Report.	Jan. 3, 1941	1–25
ad	House Report No. 2277. Annual Report.	June 25, 1942	1–22
ae	House Report No. 2277, Part II, Minority Views on Annual Report.	July 7, 1942	1–7
af	House Report No. 2748. Annual Report.	Jan. 2, 1943	1–16
ag	House Report No. 717. Japanese War Relocation Centers (including minority views).	Sept. 30, 1943	1–28
ah	House Report No. 1161. The Peace Now Movement.	Feb. 17, 1944	1–13
ai	House Report No. 1311. CIO Political Action Committee.	Mar. 29, 1944	1–215
aj	Report of a Special Subcommittee on the Tule Lake Riot.	1944	1–34
ak	Minority Views on Tule Lake Segregation Center.	1944	1–5
	SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES (DIES COMMITTEE) EXECUTIVE HEARINGS MADE PUBLIC		
A	Vol. 1	Sept. 20; Oct. 6, 9, 11, 12, 14; Nov. 9, 10, 17, 18, 20, 1939.	1–474
A	Vol. 2	Mar. 9, 11, 21; June 3; July 8–11, 16, 17, 1940.	475–981
A	Vol. 3	July 17–19, 22, 26; Aug. 5, 6, 16, 17, 19, 20, 1940.	983–1501

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES (DIES COMMITTEE) EXECUTIVE HEARINGS MADE PUBLIC—Continued		
A	Vol. 4	Oct. 2, 3, 1939; Aug. 23, 24, 26, 27; Oct. 1, 2, 17; Nov. 6, 8, 1940.	1503–2051
A	Vol. 5	Nov. 2, 18; Dec. 11, 20–22, 1940; Mar. 4; Aug. 5, 7, 8; Dec. 18, 19, 1941.	2077–2515
A	Vol. 6	Oct. 30, 1941; Jan. 15, 16, 19–22, 26; Mar. 26; Apr. 17, 1942.	2517–3001
A	Vol. 7	Mar. 23, 29–31; Apr. 1, 2, 5–9, 16, 19, 1943.	3003–3609
I	Appendix I. A Compilation of Original Sources Used as Exhibits to Show the Nature and Aims of the Communist Party, Its Connections with the U. S. S. R. and Its Advocacy of Force and Violence.	1940	1–967
II	Appendix II. A Preliminary Digest and Report on the Un-American Activities of Various Nazi Organizations and Individuals in the United States, Including Diplomatic and Consular Agents of the German Government.	1940	969–1382
III	Appendix III. Preliminary Report on Totalitarian Propaganda in the United States.	1941	1383–1442
IV	Appendix IV. German-American Bund.	1942	1443–1620
V	Appendix V. Transport Workers Union.	1941	1621–1721
VI	Appendix VI. Report on Japanese Activities.	1942	1723–2008
VII	Appendix VII. Report on the Axis Front Movement in the United States—Nazi Activities.	1943	1–111
VIII	Appendix VIII. Report on the Axis Front Movement in the United States—Japanese Activities.	1943	113–260
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS		
	79TH CONGRESS		
ba	Hearings on Office of Price Administration.	June 20, 21, 27, 1945.	1–88
bb	Hearings on Communist Party	Sept. 26, 27; Oct. 17–19, 1945.	1–175
bc	Hearings on Gerald L. K. Smith	Jan. 30, 1946	1–60
bd	Hearings on Joint Anti-Fascist Refugee Committee.	Apr. 4, 1946	1–105

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	79TH CONGRESS—continued		
be____	Hearings on Louis F. Budenz_____	Nov. 22, 1946_____	1–75
bf____	House Report No. 1996. Sources of Financial Aid for Subversive and Un-American Propaganda.	May 10, 1946_____	1–5
bg____	House Report No. 2233. Annual Report.	June 7, 1946_____	1–73
bh____	House Report No. 2742. Annual Report.	Jan. 2, 1947_____	1–18
	80TH CONGRESS		
ca____	Hearings on Gerhart Eisler_____	Feb. 6, 1947_____	1–83
cb____	Hearings regarding communism in labor unions in the United States.	Feb. 27; July 23–25, 1947.	1–231
cc____	Hearings regarding Leon Josephson and Samuel Liptzen.	Mar. 5, 21, 1947___	1–86
cd____	Hearings on H. R. 1884 and H. R. 2122, bills to curb or outlaw the Communist Party of the United States.	Mar. 24–28, 1947__	1–340
ce____	Testimony of William C. Bullitt_	Mar. 24, 1947_____	1–31
cf____	Testimony of J. Edgar Hoover__	Mar. 26, 1947_____	33–50
cg____	Testimony of Eugene Dennis____	Apr. 9, 1947_____	1–15
ch____	Testimony of Walter S. Steele___	July 21, 1947_____	1–176
ci____	Testimony of Victor Kravchenko_	July 22, 1947_____	1–30
cj____	Hearings regarding Hanns Eisler_____	Sept. 24–26, 1947__	1–209
ck____	Hearings regarding Communist infiltration of the motion-picture industry.	Oct. 20–24, 27–30, 1947.	1–549
cl____	Hearings on H. R. 4422 and H. R. 4581, proposed legislation to curb or control the Communist Party of the United States.	Feb. 5, 6, 9–11, 19, 20, 1948.	1–500
cm____	Hearings regarding Communist espionage in the United States Government. (Above includes Interim Report on Hearings Regarding Communist Espionage in the United States Government, Aug. 28, 1948, pp. 1347–1357.)	July 31; Aug. 3–5, 7, 9–13, 16–18, 20, 24–27, 30; Sept. 8, 9, 1948.	501–1378
cn____	Excerpts from hearings regarding investigation of Communist activities in connection with the atom bomb.	Sept. 9, 14, 16, 1948.	1–79
co____	Hearings regarding Communist espionage in the United States Government, Part II.	Dec. 7–10, 14, 1948.	1379–1474
cp____	House Report No. 209. Communist Party of the United States as an Agent of a Foreign Power.	Apr. 1, 1947_____	1–56
cq____	House Report No. 271. American Youth for Democracy.	Apr. 17, 1947_____	1–20
cr_____	House Report No. 592. Southern Conference for Human Welfare.	June 16, 1947_____	1–17

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	80TH CONGRESS—continued		
cs____	House Report No. 1115. Civil Rights Congress.	Made House Report Nov. 17, 1947; originally released Sept. 2, 1947.	1–47
ct_____	Report to the full committee of the Special Subcommittee on National Security (report on Dr. Edward U. Condon).	Mar. 18, 1948_____	1–7
cu____	Report of the Subcommittee on Legislation on proposed legislation to control subversive Communist activities in the United States.	Apr. 10, 1948_____	1–7
cv____	House Report No. 1844. Protecting the United States against Un-American and Subversive Activities. (Report on H. R. 5852.)	Apr. 30, 1948_____	1–14
cw____	House Report No. 1920. Report on the Communist Party of the United States as an Advocate of Overthrow of Government by Force and Violence.	May 11, 1948_____	1–160
cx____	Report on Soviet Espionage Activities in Connection with the Atom Bomb.	Sept. 28, 1948_____	161–184
cy____	Second Report, Soviet Espionage within the United States Government.	Dec. 31, 1948_____	1–129
cz____	Annual Report_____	_____do_____	1–25
	81ST CONGRESS		
d_____	Documentary testimony of Gen. Izyador Modelski.	Mar. 31; Apr. 1, 1949.	1–100
d_____	Hearings on Soviet espionage activities in connection with jet propulsion and aircraft.	June 6, 1949_____	101–128
d_____	Hearings regarding Steve Nelson____	June 8, 1949_____	129–154
d_____	Hearings regarding Toma Babin_____	May 27; July 6, 1949.	155–179
d_____	Testimony of Paul Crouch_____	May 6, 1949_____	181–220
d_____	Testimony of Philip O. Keeney and Mary Jane Keeney and statement regarding their background.	May 24, 25; June 9, 1949.	221–277
d_____	Hearings regarding Communist infiltration of radiation laboratory and atomic bomb project at the University of California, Berkeley, Calif. (vol. I).	Apr. 22, 26; May 25; June 10, 14, 1949.	279–381
d_____	Hearings regarding Clarence Hiskey, including testimony of Paul Crouch.	May 24, 1949_____	383–424
d_____	Hearings regarding Communist infiltration of minority groups (Part I).	July 13, 14, 18, 1949.	425–495

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	81ST CONGRESS—continued		
d-----	Hearings regarding Communist infiltration of minority groups (Part II) (testimony of Manning Johnson).	July 14, 1949-----	497–539
d-----	Hearings regarding Communist infiltration of labor unions (Part I).	Aug. 9–11, 1949---	541–681
d-----	Hearings regarding communism in the District of Columbia (Part I).	June 28, 29; July 6, 12, 28, 1949.	683–774
d-----	Hearings regarding Communist infiltration of radiation laboratory and atomic bomb project at the University of California, Berkeley, Calif. (Vol. II) (Identification of Scientist X).	Aug. 26, 1949; July 1; Sept. 10, 1948; Aug. 14; Sept. 14, 27, 1949.	797–832
d-----	Hearings regarding Communist infiltration of labor unions (Part II) (Security measures relating to officials of the UERMWA–CIO).	Dec. 5, 6, 1949----	833–875
d-----	Testimony of James Sterling Murray and Edward Tiers Manning (regarding Clarence Hiskey and Arthur Adams).	Aug. 14; Oct. 5, 1949.	877–899
d-----	Hearings regarding shipment of atomic material to the Soviet Union during World War II.	Dec. 5, 7, 1949; Jan. 23–26; Mar. 2, 3, 7, 1950.	901–1194
d-----	Exposé of the Communist Party of western Pennsylvania (Part I) (Based upon testimony of Matthew Cvetic, undercover agent).	Feb. 21–23; Mar. 13, 14, 24, 1950.	1195–1352
d-----	Hearings regarding Communist activities in the Territory of Hawaii (Part I).	Apr. 10–12, 1950 --	1353–1535
d-----	Hearings regarding Communist activities in the Territory of Hawaii (Part II).	Apr. 13–15, 1950--	1537–1695
d-----	Hearings regarding communism in the United States Government (Part I).	Apr. 20, 21, 25, 29; May 4–6, 1950; July 30; Aug. 7, 1948; June 8, 1950.	1697–1938
d-----	Hearings regarding Communist activties in the Territory of Hawaii (Part III).	Apr. 17–19, 1950---	1939–2110
d-----	Hearings on H. R. 3903 and H. R. 7595 (legislation to outlaw certain Un-American and subversive activities).	Mar. 21–23, 28–30; Apr. 4; May 2–4, 1950.	2111–2364
d-----	Exposé of the Communist Party of western Pennsylvania (Part II) (Based upon testimony of Matthew Cvetic, undercover agent).	Mar. 24, 25, 1950--	2365–2631

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	81ST CONGRESS—continued		
d-----	Testimony of Philip A. Bart (general manager of Freedom of the Press, publishers of the Daily Worker, official organ of the Communist Party) and Marcel Scherer (coordinator, New York Labor Conference for Peace and formerly district representative of District 4, United Electrical, Radio and Machine Workers of America, CIO).	June 21, 1950------	2633–2659
d-----	Hearings regarding Communist activities in the Cincinnati, Ohio, area (Part I).	July 12–15; Aug. 8, 1950.	2661–2833
d-----	Hearings regarding Communist infiltration of minority groups (Part III) (Testimony of Josh White).	Sept. 1, 1950------	2835–2841
d-----	Hearings regarding communism in the United States Government (Part II).	Aug. 28, 31; Sept. 1, 15, 1950.	2843–3006
d-----	Exposé of the Communist Party of western Pennsylvania (based upon testimony of Matthew Cvetic and documents of Communist Party of western Pennsylvania). (Part III)	June 22; Sept. 28; Oct. 13, 21, 1950.	3007–3167
d-----	Hearings regarding communism in the District of Columbia (Part II).	Dec. 6, 11–13, 1950	3169–3297
d-----	Testimony of Edward G. Robinson---	Oct. 27; Dec. 21, 1950.	3299–3344
d-----	American Aspects of Assassination of Leon Trotsky.[1]	July 26; Aug. 30; Oct. 18, 19; Dec. 4, 1950.	3345–3416
d-----	Hearings regarding Communist infiltration of radiation laboratory and atomic bomb project at the University of California, Berkeley, Calif. (Vol. III).	Dec. 20–22, 1950--	3417–3512
d-----	Hearings regarding Communist infiltration of labor unions. (Part III.)	Aug. 29, 30, 1950--	3513–3538
d-----	Hearings regarding Communist espionage.	Nov. 8; Dec. 2, 1949; Feb. 27; Mar. 1, 1950.	3539–3609
d-----	Testimony of Hazel Scott Powell----	Sept. 22, 1950-----	3611–3626
da----	House Report No. 1954. Review of the Scientific and Cultural Conference for World Peace.	Made House report Apr. 26, 1950; originally released Apr. 19, 1949.	1–61
db----	House Report No. 1951. American Slav Congress.	Made House report Apr. 26, 1950; originally released June 26, 1949.	1–134

[1] See also dl for references to foreword.

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	81ST CONGRESS—continued		
dc	House Report No. 1952. Report on Atomic Espionage (Nelson-Weinberg and Hiskey-Adams cases).	Made House report Apr. 26, 1950; originally released Sept. 29, 1949.	1–15
dd	House Report No. 1953. Congress of American Women.	Made House report Apr. 26, 1950; originally released Oct. 23, 1949.	1–114
de	House Report No. 1950. Annual Report for Year 1949.	Made House report Apr. 26, 1950; originally released Mar. 15, 1950.	1–75
df	House Report No. 2986. Hawaii Civil Liberties Committee—A Communist Front.	Made House report Aug. 24, 1950; originally released June 23, 1950.	1–56
dg	The Communist "Peace Petition" Campaign (Interim Statement).	July 13, 1950	1–3
dh	House Report No. 3123. National Lawyers Guild.	Made House report Sept. 21, 1950; originally released Sept. 17, 1950.	1–50
di	Report on the Honolulu Record	Oct. 1, 1950	1–38
dj	House Report No. 3248. The National Committee To Defeat the Mundt Bill—A Communist Lobby.	Made House report Jan. 2, 1951; originally released Dec. 7, 1950.	1–15
dk	House Report No. 3249. Annual Report for Year 1950.	do	1–43
dl	Foreword—American Aspects of Assassination of Leon Trotsky.	July 26; Aug. 30; Oct. 18, 19; Dec. 5, 1950.	v–xv
	82D CONGRESS		
	Hearings		
e	Hearings regarding Communist activities in the Territory of Hawaii. (Part IV.)	July 6, 1951	1–53
e	Communist infiltration of Hollywood motion-picture industry. (Part I.)	Mar. 8, 21; Apr. 10–13, 1951.	55–302
e	Communist infiltration of Hollywood motion-picture industry. (Part II.)	Apr. 17, 23–25; May 16–18, 1951.	303–532
e	Communist infiltration of Hollywood motion-picture industry. (Part III.)	May 22–25; June 25, 26, 1951.	533–738
e	Hearings relating to Communist activities in the defense area of Baltimore. (Part I.) (Based on testimony of Mary Stalcup Markward.)	June 19–21, 26–28; July 11, 13, 1951.	739–903

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	82D CONGRESS—continued		
	Hearings—Continued		
e_____	Hearings relating to Communist activities in the defense area of Baltimore. (Part II.) (Maryland Committee for Peace and Baltimore County Committee for Peace.)	June 28; July 10, 12, 1951.	905–954
e_____	Hearings relating to Communist activities in the defense area of Baltimore. (Part III.)	June 19, 20, 26–28; July 10, 12, 13, 1951.	955–1131
e_____	Hearings on American aspects of the Richard Sorge spy case.	Aug. 9, 22, 23, 1951.	1133–1255
e_____	Exposé of Communist activities in the State of Massachusetts (based on the testimony of Herbert A. Philbrick).	July 23, 24; Oct. 10, 11, 1951.	1257–1413
e_____	Communist infiltration of Hollywood motion-picture industry. (Part IV.)	Sept. 17–19, 1951__	1415–1638
e_____	Communist infiltration of Hollywood motion-picture industry. (Part V.)	Sept. 20, 21, 24, 25, 1951.	1639–1882
e_____	Hearings regarding Communist activities among farm groups.	Feb. 28, Mar. 9, 1951.	1883–1923
e_____	Communist tactics among veterans' groups.	July 13, 1951_____	1925–1964
e_____	Testimony of Oliver Edmund Clubb_	Mar. 14; Aug. 20, 23, 1951.	1965–2052
e_____	Communist infiltration of Hollywood motion-picture industry. (Part VI.)	May 10; Sept. 10–12, 1951.	2053–2126
e____	The role of the Communist press in the Communist conspiracy.	Jan. 9, 10, 15–17, 1952.	2127–2306
e_____	Communist infiltration of Hollywood motion-picture industry. (Part VII.)	Jan. 24, 28; Feb. 5; Mar. 20; Apr. 10, 30, 1952.	2307–2434
e_____	Communist activities among professional groups in the Los Angeles area. (Part I.)	Jan. 21–26; Apr. 9, 1952.	2437–2709
e_____	Communism in the Detroit area. (Part I.)	Feb. 25–29, 1952__	2711–2958
e_____	Communism in the Detroit area. (Part II.)	Mar. 10–12; Apr. 29, 30, 1952.	2959–3271
e_____	Communist activities among youth groups (based on testimony of Harvey M. Matusow).	Feb. 6, 7, 1952____	3273–3343
e_____	Methods of Communist infiltration in the United States Government.	May 6; June 10, 23, 1952.	3345–3452
e_____	Communist infiltration of Hollywood motion-picture industry. (Part VIII.)	May 19–21, 1952__	3453–3549
e_____	Communist activities among professional groups in the Los Angeles area. (Part II.)	May 22; July 8, 1952.	3551–3596

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	82D CONGRESS—continued		
	Hearings—Continued		
e-----	Testimony of Lynne L. Prout-------	Feb. 14, 1952-----	3597–3620
e-----	Communist activities in the Chicago area. (Part I.)	Sept. 2, 3, 1952----	3621–3752
e-----	Communist activities in the Chicago area. (Part II.)	Sept. 4, 5, 1952----	3753–3832
e-----	Testimony of Dr. Edward U. Condon.	Sept. 5, 1952------	3833–3897
e-----	Communist activities among professional groups in the Los Angeles area. (Part III.)	Sept. 30; Oct. 1, 2, 1952.	3899–4107
e-----	Communist activities among professional groups in the Los Angeles area. (Part IV.)	Oct. 3, 6, 7, 1952--	4109–4247
e-----	Communist infiltration of Hollywood motion-picture industry. (Part IX.)	Aug. 19; Sept. 29, 1952.	4249–4282
e-----	Testimony of Gen. Walter Bedell Smith.	Oct. 13, 1952------	4283–4298
e-----	Communist activities in the Philadelphia area.	Oct. 13–16, 1952---	4299–4470
e-----	Communist infiltration of Hollywood motion-picture industry. (Part X.)	Nov. 12, 13, 1952--	4471–4517
	Reports		
ea----	The March of Treason----------	Feb. 19, 1951------	1–2
eb----	House Report No. 378. The Communist "Peace" Offensive.	Made House report Apr. 25, 1951; originally released Apr. 1, 1951.	1–166
ec----	Guide to Subversive Organizations and Publications. House Document No. 137----------	May 14, 1951------	1–166
ed----	House Document No. 136. 100 Things You Should Know About Communism.	-----do----------	5–126
ee----	House Report No. 1229. The Shameful Years.	Made House report Jan. 8, 1952; originally released Dec. 30, 1951.	1–70
ef----	House Report No. 2431. Annual Report for Year 1951.	Made House report July 2, 1952; originally released Feb. 17, 1952.	1–30
eg----	House Report No. 1661. Review of the Methodist Federation for Social Action.	Made House report Mar. 27, 1952; originally released Feb. 17, 1952.	1–87
eh----	House Report No. 2516. Annual Report for Year 1952.	Made House report Jan. 3, 1953; originally released Dec. 28, 1952.	1–89

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	83D CONGRESS		
	Hearings		
f_____	Communist Methods of Infiltration (Education).	Feb. 25, 26, and 27, 1953.	1–123
f_____	Communist Methods of Infiltration (Education). (Part 2.)	Mar. 12, 13, 17, 18; Apr. 14 and 16, 1953.	125–265
f_____	Investigation of Communist Activities in the Los Angeles Area. (Part 1.)	Mar. 23, 24, and 25, 1953.	267–438
f_____	Investigation of Communist Activities in the Los Angeles Area. (Part 2.)	Mar. 26, 27, and 28, 1953.	439–611
f_____	Investigation of Communist Activities in the Los Angeles Area. (Part 3.)	Mar. 30 and 31, 1953.	613–715
f_____	Investigation of Communist Activities in the Los Angeles Area. (Part 4.)	Apr. 7, 8, 1953____	717–845
f_____	Investigation of Communist Activities in the Los Angeles Area. (Part 5.)	Dec. 2, 1952; Feb. 17, Mar. 12, 27, Apr. 7 and 13, 1953.	847–976
f_____	Communist Methods of Infiltration (Education). (Part 3.)	Apr. 21 and 22, 1953.	977–1072
f_____	Communist Methods of Infiltration (Education). (Part 4.)	Apr. 23 and 27, 1953.	1073–1148
f_____	Investigation of Communist Activities in the New York City Area. (Part 1.)	May 4, 1953_____	1149–1233
f_____	Investigation of Communist Activities in the New York City Area. (Part 2.)	May 5, 1953_____	1235–1341
f_____	Investigation of Communist Activities in the New York City Area. (Part 3.)	May 6, 1953_____	1343–1426
f_____	Investigation of Communist Activities in the New York City Area. (Part 4.)	May 7, 1953_____	1427–1502
f_____	Communist Methods of Infiltration (Education). (Part 5.)	Apr. 29, May 19, 26, 27, and 28, 1953.	1503–1586
f_____	Communist Methods of Infiltration (Government-Labor).	Apr. 17, May 14, and June 9, 1953.	1587–1686
f_____	Franciszek Jarecki, Flight to Freedom.	July 1, 1953_____	1687–1705
f_____	Soviet Schedule for War, 1955_____	May 13 and 14, 1953.	1707–1738
f_____	Investigation of Communist Activities in the Columbus, Ohio, Area.	June 17 and 18, 1953.	1739–1841
f_____	Communist Methods of Infiltration (Education.) (Part 6.)	June 22, 24, 29, and July 1, 1953.	1843–1937
f_____	Testimony of Stephen H. Fritchman	Sept. 12, 1951_____	1939–1952
f_____	Communist Methods of Infiltration (Government-Labor.) (Part 2.)	July 20, 1953_____	1953–1967

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	83D CONGRESS—continued		
	Hearings—Continued		
f_____	Investigation of Communist Activities in the New York City Area. (Part 5.)	July 6, 1953_____	1969–2034
f_____	Investigation of Communist Activities in the New York City Area. (Part 6.)	July 7, 1953_____	2035–2143
f_____	Investigation of Communist Activities in the New York City Area. (Part 7.) (Based on testimony of Manning Johnson.)	July 8, 1953_____	2145–2199
f_____	Investigation of Communist Activities in the New York City Area. (Part 8.) (Based on testimony of Manning Johnson.)	July 13 and 14, 1953.	2201–2298
f_____	Investigation of Communist Activities in the Los Angeles Area. (Part 6.)	Mar. 21, 1951, and June 2, 1953.	2299–2360
f_____	Investigation of Communist Activities in the Albany, N. Y., Area. (Part 1.)	July 13 and 14, 1953.	2361–2471
f_____	Investigation of Communist Activities in the Albany, N. Y., Area. (Part 2.)	July 15 and 16, 1953.	2473–2559
f_____	Investigation of Communist Activities in the Los Angeles Area. (Part 7.)	Sept. 4, 1953_____	2561–2583
f_____	Testimony of Dr. Marek Stanislaw Korowicz.	Sept. 24, 1953_____	2585–2609
f_____	Hearings regarding Jack R. McMichael.	July 30 and 31, 1953.	2611–2884
f_____	Investigation of Communist Activities in the Philadelphia Area. (Part 1.)	Nov. 16, 1953_____	2885–2944
f_____	Investigation of Communist Activities in the Philadelphia Area. (Part 2.)	Nov. 17 and 18, 1953.	2945–3023
f_____	Communist Methods of Infiltration (Government-Labor). (Part 3.) (Based on testimony of James McNamara.)	Sept. 15, 1953_____	3025–3053
f_____	Investigation of Communist Activities in the San Francisco Area. (Part 1.)	Dec. 1, 1953_____	3055–3158
f_____	Investigation of Communist Activities in the San Francisco Area. (Part 2.)	Dec. 2, 1953_____	3159–3266
f_____	Investigation of Communist Activities in the San Francisco Area. (Part 3.)	Dec. 3, 1953_____	3267–3348
f_____	Investigation of Communist Activities in the San Francisco Area. (Part 4.)	Dec. 4, 1953_____	3349–3419
f_____	Investigation of Communist Activities in the San Francisco Area. (Part 5.)	Dec. 5, 1953_____	3421–3499

Key to symbols—Continued

Symbol	Publication	Date	Pagination
·	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	83D CONGRESS—continued		
	Hearings—Continued		
f_____	Investigation of Communist Activities in the Los Angeles Area. (Part 8.)	Nov. 23, 1953_____	3501–3558
f_____	Communist Methods of Infiltration (Education). (Part 7.)	May 15, 1953_____	3559–3583
f_____	Testimony of Bishop G. Bromley Oxnam.	July 21, 1953_____	3585–3850
f_____	Communist Methods of Infiltration (Entertainment) (Part 1).	Jan. 13, 1954_____	3851–3899
f_____	Investigation of Communist Activities in the Philadelphia Area. (Parts 3 and 4.)	Feb. 16, 17, 1954__	3901–4012
f_____	Communist Methods of Infiltration (Education) (Part 8).	Apr. 21; June 8, 1953; Apr. 12, 1954.	4013–4053
f_____	Investigation of Communist Activities in the Baltimore Area. (Parts 1–3.)	May 18; Mar. 25, 26, 1954.	4055–4164
f_____	Investigation of Communist Activities in the Chicago Area. (Parts 1–3.)	Mar. 15, 16; Apr. 29, 1954.	4165–4296
f_____	Investigation of Communist Activities in the Albany, N. Y., Area. (Parts 3–6.)	Apr. 7, 8, 9, 1954__	4297–4465
f_____	Communism in the District of Columbia-Maryland Area (testimony of Mary Stalcup Markward).	June 11, 1951_____	4467–4515
f_____	Investigation of Communist Activities in the State of California. (Parts 1–10.)	Feb. 1, 24; Mar. 1; Apr. 12, 19–22, 1954; Sept. 11, 1953.	4517–4990
f_____	Investigation of Communist Activities in the State of Michigan (Parts 1–5) (Detroit).	Apr. 28, 29, 30; May 3, 4, 5, 7, 1954.	4991–5328
f_____	Investigation of Communist Activities in the State of Michigan (Parts 6 and 7) (Lansing).	May 10, 11, 1954; June 8, 1953.	5329–5486
f_____	Investigation of Communist Activities in the State of Michigan (Parts 8–10) (Flint).	Apr. 30; May 12, 13, 14, 1954.	5487–5751
f_____	Communist Methods of Infiltration (Education) (Part 9).	June 28, 29, 1954__	5753–5837
f_____	Communist Activities Among Youth Groups (Based on testimony of Harvey M. Matusow) (Part 2).	July 12, 1954_____	5839–5848
f_____	Investigation of Communist Influence in the Field of Publications (March of Labor).	July 8, 15, 1954___	5849–5891
f_____	Hearings Regarding Communism in the District of Columbia. (Part 3.)	July 14, 15, 1954__	5893–5963
f_____	Investigation of Communist Activities in the Pacific Northwest Area. (Part 1.)	Oct. 3, 1952; Mar. 16; May 28; June 2, 9, 1954.	5965–6050
f_____	Investigation of Communist Activities in the Pacific Northwest Area. (Parts 2 and 3.) (Seattle-Hartle.)	June 14, 15, 18, 1954.	6051–6233

Key to symbols—Continued

Symbol	Publication	Date	Pagination
	COMMITTEE ON UN-AMERICAN ACTIVITIES, HEARINGS AND REPORTS—Con.		
	83D CONGRESS—continued		
	Hearings—Continued		
f_____	Investigation of Communist Activities in the Pacific Northwest Area. (Parts 4–8.) (Seattle.)	June 14–19, 1954__	6235–6604
f_____	Investigation of Communist Activities in the Pacific Northwest Area. (Parts 9 and 10.) (Portland.)	June 18, 19, 1954__	6605–6724
f_____	Investigation of Communist Activities in the Pacific Northwest Area. (Part 11.) (Appendix.)	June 14–19, 1954__	6725–6771
f_____	Investigation of Communist Activities in the Philadelphia Area. (Part 5.)	July 30, 1954_____	6773–6798
f_____	Investigation of Communist Activities in the Dayton, Ohio, Area. (Parts 1–3.)	Sept. 13, 14, 15, 1954.	6799–7019
f_____	Investigation of Communist Activities in the State of California. (Part 11.)	Sept. 17, 1954_____	7021–7075
f_____	Investigation of Communist Activities in the Dayton, Ohio, Area. (Part 4.)	Nov. 17, 18, 19, 1954.	7077–7101
f_____	Investigation of Communist Activities in the State of Michigan. (Parts 11 and 12.)	_____do_____	7103–7239
f_____	Communist Methods of Infiltration (Entertainment.) (Part 2.)	Dec. 14, 1954 ____	7241–7270
f_____	Communist Methods of Infiltration (Government-Labor.) (Part 4.)	Jan 13; Dec. 15, 1954.	7271–7286
f_____	Investigation of Communist Activities in the State of Florida. (Parts 1 and 2.)	Nov. 29, 30; Dec. 1, 1954.	7287–7463
	Reports		
fa____	House Report No. 1694 Organized Communism in the United States.	Made House Report May 28, 1954; originally released Aug. 19, 1953.	1–150
fb____	House Report No. 1192 Annual Report of the Committee on Un-American Activities for the Year 1953.	Made House Report Feb. 8, 1954; originally released Feb. 6, 1954.	1–195
fc_____	Colonization of America's Basic Industries by the Communist Party of the U. S. A.	Sept. 3, 1954_____	1–18
fd____	Preliminary Report on Neo-Fascist and Hate Groups.	Dec. 17, 1954_____	1–32
fe____	The American Negro in the Communist Party.	Dec. 22, 1954_____	1–16
ff_____	Report on the March of Labor_____	_____do_____	1–26
fg____	House Report No. 57 Annual Report for the Year 1954.	Made House Report Feb. 16, 1955; originally released Jan. 26, 1955.	1–23

[1] Incorrectly spelled Klabauch.
[2] Referred to as Klapproth in some instances.

[1] Spelled incorrectly in some references.

Klapprott v. United States, 335 U.S. 601 (1949)

Syllabus

U.S. Supreme Court

Klapprott v. United States, 335 U.S. 601 (1949)

Klapprott v. United States

No. 42

Argued October 20, 1948

Decided January 17, 1949

335 U.S. 601

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335 U.S. 601

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Syllabus

Nine years after petitioner had been admitted to citizenship and granted a certificate of naturalization, the United States filed a complaint in a federal district court in New Jersey under 8 U.S.C. § 738 to set aside the order and cancel the certificate. It alleged that his oath of allegiance was false; that subsequently, by writings and speeches, he had evidenced his loyalty to Germany and disloyalty to the United States, and that he was a leader and a member of the German American Bund and other subversive organizations. He was served with notice, but failed to answer within sixty days as required by 8 U.S.C. § 738(b). (Seven days before expiration of the sixty days, he was arrested on federal criminal charges and confined in a New York jail.) Without hearings or evidence, the court entered a default judgment setting aside the order admitting him to citizenship and canceling his certificate of naturalization. More than four years later, and while still a federal prisoner, he filed in the same court a verified petition praying that the default judgment be set aside. *Inter alia,* he alleged in substance that, while wrongfully holding him in New York, Michigan, and District of Columbia jails, the Government caused a district court in New Jersey to revoke his citizenship on the ground that he had failed to appear and defend, although he was at the time without funds to hire a lawyer. These allegations were undenied. The district court dismissed the petition on the ground of laches. The Court of Appeals affirmed.

Held: the judgments are reversed and the cause is remanded to the district court with instructions to set aside the default judgment and grant petitioner a hearing on the merits of the issues raised by the denaturalization complaint. Pp. 335 U. S. 602-608, 335 U. S. 615-616. [This judgment modified, 336 U.S. 942.]

166 F.2d 273 reversed.

A federal district court entered a default judgment setting aside an order admitting petitioner to citizenship and canceling his certificate of naturalization. More than four years later, he petitioned the same court to set aside the default judgment, but his petition was dismissed on the ground of laches. 6 F.R.D. 450. The Court of

Page 335 U. S. 602

Appeals affirmed. 166 F.2d 273. This Court granted certiorari. 334 U.S. 818. *Reversed,* pp. 615-616.

MR. JUSTICE BLACK announced the judgment of the Court and delivered the following opinion in which MR. JUSTICE DOUGLAS joins.

This case raises questions concerning the power of federal district courts to enter default judgments depriving naturalized persons of their citizenship without hearings or evidence, and to set aside default judgments under some circumstances four years or more after the default judgments were entered.

The petitioner was born in Germany. In 1933, after a hearing, a New Jersey state court entered a judgment admitting him to United States citizenship. Petitioner then took an oath renouncing allegiance to Germany and promising to bear true faith and allegiance to the United States, whereupon the court granted him a certificate of naturalization. *See* 8 U.S.C. § 735.

Nine years later, the United States Attorney, acting pursuant to 8 U.S.C. § 738, filed a complaint in the United States District Court of New Jersey to set aside the state court's judgment and cancel petitioner's certificate of naturalization. The complaint alleged generally that petitioner's oath of allegiance, etc., was false, that, at the time of taking it, petitioner well knew that he was not attached to the principles of the United States Constitution, and that he had not in fact, intended thereafter to bear true allegiance to the United States or renounce and discontinue his allegiance and fidelity to Germany.

Page 335 U. S. 603

In particular, the complaint charged no more than that petitioner, subsequent to 1935, had evidenced his loyalty to Germany and his disloyalty to this country by writings and speeches; that he was in 1942, and had been before that time, a leader and member of the German American Bund and other organizations the principles of which were alleged to be

inimical to the Constitution of the United States and the happiness of its people; that these organizations were propagated and encouraged by enemies of the United States who believed in the ideology enunciated by Adoph Hitler. For the requirement that allegations of fraud be particularized, *see* Rule 9(b) of the Rules of Civil Procedure.

Petitioner, though served with notice May 15, 1942, failed to answer the complaint within sixty days as required by 8 U.S.C. § 738(b). But, on July 7, 1942, before expiration of the sixty days, petitioner was arrested and confined in a New York jail on criminal charges brought by the United States. On July 17, 1942, the Federal District Court of New Jersey on motion of the United States Attorney, entered a judgment by default against petitioner in the denaturalization proceedings, set aside the 1933 state court judgment admitting him to citizenship, and canceled his certificate of naturalization.

More than four years after the default judgment was rendered against him, and while petitioner was still a government prisoner, he filed in the District Court a verified petition praying that the court set aside the judgment. The United States did not deny any of the facts alleged in the verified petition. The District Court, necessarily accepting the undenied allegations as true, held that the petitioner had been guilty of "willful and inexcusable neglect," and accordingly dismissed the petition "because of the defendant's laches." 6 F.R.D. 450, 451. The Circuit Court of Appeals, rejecting petitioner's several contentions, affirmed, one judge dissenting. 166 F.2d 273.

Page 335 U. S. 604

In considering the case, we also must accept as true the undenied allegations of the petitioner. These facts are of great importance in considering some of the legal contentions raised. The alleged facts chronologically arranged are as follows:

1933

Nov. 16. Petitioner was naturalized by order of court.

1936

Nov. 17. Petitioner married an American citizen, and now has one child by that marriage.

1942

Spring. Petitioner was seriously ill. The illness left him financially poor and so weakened that he was unable to work.

May 12. United States Attorney filed the complaint in the United States District Court of

New Jersey to cancel petitioner's citizenship.

May 15. Complaint served on petitioner. He had no money to hire a lawyer. He drew a draft of an answer to the complaint and wrote a letter to the American Civil Liberties Union asking that they represent him without fee.

July 7. Arrested under federal indictment charging petitioner and others with conspiracy to violate the Selective Service Act. Taken before United States Commissioner at Newark, New Jersey; later carried to New York by Federal Bureau of Investigation agents, there put in prison, unable to make bond of $25,000 under which he

Page 335 U. S. 605

was held. His letter to Civil Liberties Union taken from him by agents of the FBI eight days before expiration of time to answer cancelation of citizenship charge in New Jersey. The agents retained the letter, never mailing it.

1942

July 17. Judgment by default entered by New Jersey court in citizenship cancelation case. At the time, petitioner was in a New York jail awaiting trial under the selective service conspiracy case. No evidence was offered by the Government to prove its charges in the complaint for cancelation of citizenship. The government's case consisted or no more than a verification of this complaint by an FBI agent on information and belief, based on the agent's having read FBI files concerning petitioner.

July 7, 1942, date of arrest, to June 1943. While petitioner was still in jail, a lawyer was appointed by the New York District Court to defend petitioner in the selective service criminal case. At his request, the New York lawyer promised to help him also in the New Jersey cancelation proceedings, but the lawyer neglected to do so. Petitioner was convicted and sentenced to penitentiary.

1943

June. Petitioner elected to begin service of the New York sentence pending appeal, was carried to and confined in federal institution in Michigan, where he remained until January 30, 1944.

Page 335 U. S. 606

1944

Jan. 30. Petitioner transferred from federal prison in Michigan to jail in the District of Columbia to be tried with twenty-nine other persons on a charge of sedition.

1945

June 11. This Court reversed petitioner's New York conviction, *Keegan v. United States,* 325 U. S. 478, but he continued to be held in the District of Columbia jail until November 22, 1946.

1946

Nov. 22. District of Columbia sedition case dismissed. *United States v. McWilliams et al.,* 82 U.S.App.D.C. 259, 163 F.2d 695. The case had previously been tried for eight months, but before completion, a mistrial was declared because of the death of the presiding judge. Shortly after dismissal of the sedition case, petitioner, still a prisoner of the United States, was carried to Ellis Island for deportation on account of the cancelation of his citizenship under the New Jersey default judgment.

Dec. 9. This Court denied certiorari in three court actions unsuccessfully prosecuted by the Citizen's Protective League on behalf of 159 individuals, including petitioner. (The League was a nonprofit organization "to insure equal rights for all and to safeguard the constitutional rights of all persons." *Citizens Protective League v. Clark,* 81 U.S.App.D.C. 116, 155 F.2d 290, 291, *cert. denied,* 329 U.S. 787. The complaint prayed that the Attorney

Page 335 U. S. 607

General be enjoined from deporting the 159 individuals. Petitioner had been ordered deported March 27, 1946, while he was in the District of Columbia jail charged with sedition.)

1946

Dec. 12. Three days after this Court's denial of certiorari, in the action brought by the Citizens Protective League, petitioner, still a government prisoner at Ellis Island, stated the substance of the foregoing facts under oath, and a petition was filed on his behalf in the New Jersey District Court to vacate the default judgment and grant him a trial on the merits. Petitioner's verified motion also alleged that the government's charges against him in the New Jersey court were untrue, and he strongly asserted his loyalty to the United States.

1947

Feb. 7. District judge dismissed the petitioner's motion, holding that petitioner had been guilty of laches in not arranging, while in prison, for defense of the cancelation of citizenship charge.

Thus, this petitioner has now been held continuously in prison by the Government for six and one-half years. During that period, he served one and one-half years of a penitentiary punishment under a conviction which this Court held was improper. He was also held in the District of Columbia jail two years and ten months under an indictment that was later dismissed. It is clear therefore, that, for four and one-half years, this petitioner was held in prison on charges that the Government was unable to sustain. No other conclusion can be drawn except that

Page 335 U. S. 608

this long imprisonment was wrongful. Whether the judgment by default should be set aside must therefore be decided on the undenied allegations that the Government, largely through the action of FBI agents, wrongfully held petitioner in New York, Michigan, and District of Columbia prisons while the same Government, largely acting through the same or other FBI agents, caused a district court to revoke petitioner's citizenship on the ground that petitioner had failed to make appearance and defend in the New Jersey courts, although petitioner was at the time without funds to hire a lawyer.

First. Amended Rule 60(b) of the Federal Rule of Civil Procedure became effective March 19, 1948.* That

Page 335 U. S. 609

was after the District Court denied the motion to set aside this default judgment and after affirmance of the District Court's action by the Court of Appeals. For these reasons, the Government contends that amended Rule 60(b) should not be applied here. In some respects, the amended rule grants courts a broader power to set aside judgments than did the old rule. Petitioner should be afforded the benefit of the more liberal amended 60(b). For Rule 86(b) made amended 60(b) applicable to "further proceedings in actions then pending" unless it "would work injustice" so to apply the rule. It seems inconceivable that one could think it would work any injustice to the Government to measure the petitioner's rights by this amended rule in this case where all he asks is a chance to try the denaturalization proceeding on its merits. Amended Rule 60(b) should be applied.

Second. Amended Rule 60(b) authorizes a court to set aside "a void judgment" without regard to the limitation of a year applicable to motions to set aside on some other grounds. It is contended that this judgment is void because rendered by a District Court without

It is contended that this judgment is void because rendered by a District Court without hearing any evidence. The judgment is void if the hearing of evidence is a legal prerequisite to rendition of a valid default judgment in denaturalization proceedings. While 5 U.S.C. § 738, under which this denaturalization complaint was filed, plainly authorizes courts to revoke the citizenship of naturalized citizens after notice and hearing, it contains no explicit authorization for rendition of default judgments. Congressional intention to authorize court action in the absence of a citizen might be implied, however, from the provision for notice by publication in § 738(b). Aside from possible constitutional questions, it may therefore be assumed that the section authorizes rendition of a denaturalization judgment in a defendant's absence. But it does not necessarily follow

Page 335 U. S. 610

that a court may also render judgment without proof of the charges made in a denaturalization complaint. And there is strong indication in § 738 and companion sections that Congress did not intend to authorize courts automatically to deprive people of their citizenship for failure to appear.

8 U.S.C. § 746 makes it a felony for applicants for naturalization or others to violate federal laws relating to naturalization. Had petitioner been found guilty of making the false oath here charged, he could have been convicted of and punished for a felony under this section. But he could have been convicted only after indictment and a jury trial at which he would have been present and represented by counsel. A conviction would have required a proof of guilt beyond a reasonable doubt, on testimony of witnesses given in the presence of the accused, who would have had an opportunity to cross-examine the witnesses against him. In the event of such a conviction under required procedural safeguards, § 738(e) authorizes courts to revoke citizenship and cancel naturalization certificates. There is a broad gap between a § 738 denaturalization thus accomplished and the one ordered by the court in this proceeding. For here, the defendant was absent, no counsel or other representative of his was present, no evidence was offered, and the only basis for action was a complaint containing allegations, questionable from a procedural and substantive standpoint, verified by an FBI agent on information acquired by him from looking at hearsay statements in an FBI dossier. The protection Congress afforded in § 738(e) emphasizes the unfairness that would result from permitting denaturalizations in other § 738 proceedings without any evidence at all.

When we look to federal statutes other than § 738, we find no command and no express authority for courts to

Page 335 U. S. 611

enter denaturalization judgments by default without proof of facts to support the judgment. No such authority or command is contained in Rule 55 of the Federal Rules of Civil Procedure, which rule relates to default judgments. Section (e) of Rule 55 expressly bars all judgments against the United States without proof, but it cannot be inferred from this that proof is never required as a prerequisite to default judgments against all defendants other than the United States. For subdivision (b)(2) of Rule 55 expressly provides for representation of defaulting parties in some instances. Subdivision (b)(2) also directs that, in certain specified instances, courts, before entering judgments after default of appearance, shall make investigations, conduct hearings, and even grant jury trial. In addition to these particularized instances, subdivision (b)(2) also provides for court hearings before default judgment where "it is necessary . . . to establish the truth of any averment by evidence or to make an investigation of any other matter."

Thus, it appears that statutes and rules have largely left for judicial determination the type of cases in which hearings and proof should precede default judgments. In this situation, it is the final responsibility of this Court to formulate the controlling rules for hearings and proof. *See McNabb v. United States,* 318 U. S. 332, 318 U. S. 431. For the following reasons, it seems peculiarly appropriate that a person's citizenship should be revoked only after evidence has established that the person has been guilty of prohibited conduct justifying revocation.

Denaturalization consequences may be more grave than consequences that flow from conviction for crimes. Persons charged with crime in United States courts cannot be convicted on default judgments unsupported by proof. Even decrees of divorce or default judgments for money damages where there is any uncertainty as to the amount

Page 335 U. S. 612

must ordinarily be supported by actual proof. The reasons for requirement of proof in cases involving money apply with much greater force to cases which involve forfeiture of citizenship and subsequent deportation. This Court has long recognized the plain fact that to deprive a person of his American citizenship is an extraordinarily severe penalty. The consequences of such a deprivation may even rest heavily upon his children. 8 U.S.C. § 719. As a result of the denaturalization here, petitioner has been ordered deported.

"To deport one who son claims to be a citizen obviously deprives him of liberty. . . . It may result also in loss of both property and life, or of all that makes life worth living."

Ng Fung Ho v. White, 259 U. S. 276, 259 U. S. 284. Because denaturalization proceedings have not fallen within the technical classification of crimes is hardly a satisfactory reason for

have not fallen within the technical classification of crimes is hardly a satisfactory reason for allowing denaturalization without proof, while requiring proof to support a mere money fine or a short imprisonment.

Furthermore, because of the grave consequences incident to denaturalization proceedings, we have held that a burden rests on the Government to prove its charges in such cases by clear, unequivocal, and convincing evidence which does not leave the issue in doubt. *Schneiderman v. United States,* 320 U. S. 118, 320 U. S. 158. This burden is substantially identical with that required in criminal cases -- proof beyond a reasonable doubt. The same factors that caused us to require proof of this nature as a prerequisite to denaturalization judgments in hearings with the defendant present apply at least with equal force to proceedings in which a citizen is stripped of his citizenship rights in his absence. Assuming that no additional procedural safeguards are required, it is our opinion that courts should not, in § 738 proceedings, deprive a person of his citizenship until the Government first offers proof of its charges sufficient to satisfy the

Page 335 U. S. 613

burden imposed on it, even in cases where the defendant has made default in appearance.

Third. But even if this judgment of denaturalization is not treated as void, there remain other compelling reasons under amended 60(b) for relieving the petitioner of its effect. Amended 60(b) provides for setting aside a judgment for any one of five specified reasons, or for "any other reason justifying relief from the operation of the judgment." The first of the five specified reasons is "mistake, inadvertence, surprise, or excusable neglect." To take advantage of this reason, the Rule requires a litigant to ask relief "not more than one year after the judgment, order, or proceeding was entered or taken." It is contended that the one-year limitation bars petitioner on the premise that the petition to set aside the judgment showed, at most, nothing but "excusable neglect." And of course, the one-year limitation would control if no more than "neglect" was disclosed by the petition. In that event, the petitioner could not avail himself of the broad "any other reason" clause of 60(b). But petitioner's allegations set up an extraordinary situation which cannot fairly or logically be classified as mere "neglect" on his part. The undenied facts set out in the petition reveal far more than a failure to defend the denaturalization charges due to inadvertence, indifference, or careless disregard of consequences. For before, at the time, and after the default judgment was entered, petitioner was held in jail in New York, Michigan, and the District of Columbia by the United States, his adversary in the denaturalization proceedings. Without funds to hire a lawyer, petitioner was defended by appointed counsel in the criminal cases. Thus, petitioner's prayer to set aside the default judgment did not rest on mere allegations of "excusable neglect." The foregoing allegations and others in the petition

tend to support petitioner's argument that he was deprived of any reasonable opportunity to

Page 335 U. S. 614

make a defense to the criminal charges instigated by officers of the very United States agency which supplied the second-hand information upon which his citizenship was taken away from him in his absence. The basis of his petition was not that he had neglected to act in his own defense, but that, in jail as he was, weakened from illness, without a lawyer in the denaturalization proceedings or funds to hire one, disturbed and fully occupied in efforts to protect himself against the gravest criminal charges, he was no more able to defend himself in the New Jersey court than he would have been had he never received notice of the charges. Under such circumstances, petitioner's prayer for setting aside the default judgment should not be considered only under the excusable neglect, but also under the "other reason," clause of 60(b), to which the one year limitation provision does not apply.

Fourth. Thus, we come to the question whether petitioner's undenied allegations show facts "justifying relief from the operation of the judgment." It is contended that the "other reason" clause should be interpreted so as to deny relief except under circumstances sufficient to have authorized relief under the common law writs of *coram nobis* and *audita querela,* and that the facts shown here would not have justified relief under these common law proceedings. One thing wrong with this contention is that few courts ever have agreed as to what circumstances would justify relief under these old remedies. To accept this contention would therefore introduce needless confusion in the administration of 60(b), and would also circumscribe it within needless and uncertain boundaries. Furthermore, 60(b) strongly indicates on its face that courts no longer are to be hemmed in by the uncertain boundaries of these and other common law remedial tools. In simple English, the language of the "other reason" clause, for all reasons except the five particularly

Page 335 U. S. 615

specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.

Fifth. The undenied allegations already set out show that a citizen was stripped of his citizenship by his Government, without evidence, a hearing, or the benefit of counsel at a time when his Government was then holding the citizen in jail with no reasonable opportunity for him effectively to defend his right to citizenship. Furthermore, the complaint in the denaturalization proceeding strongly indicates that the Government here is proceeding on inadequate facts, just as it did in the criminal cases it brought against petitioner. For if the Government had been able on a trial to prove no more than the

particular facts it alleged in its denaturalization complaint, it is doubtful if its proof could have been held sufficient to revoke petitioner's citizenship under our holdings in *Baumgartner v. United States,* 322 U. S. 665; *Schneiderman v. United States,* 320 U. S. 118; *Knauer v. United States,* 328 U. S. 654, 328 U. S. 659, *and see* Rule 9(b) of the Rules of Civil Procedure. And all petitioner has asked is that the default judgment be set aside so that, for the first time, he may defend on the merits. Certainly the undenied facts alleged justify setting aside the default judgment for that purpose. Petitioner is entitled to a fair trial. He has not had it. The Government makes no claim that he has. Fair hearings are in accord with elemental concepts of justice, and the language of the "other reason" clause of 60(b) is broad enough to authorize the Court to set aside the default judgment and grant petitioner a fair hearing.

MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, MR. JUSTICE MURPHY, MR. JUSTICE RUTLEDGE, and MR. JUSTICE BURTON agree that the District Court erred in dismissing the petition to set aside the default judgment, and that

Page 335 U. S. 616

the Court of Appeals erred in affirming the District Court judgment. The judgments accordingly are reversed, and the cause is remanded to the District Court with instructions to set aside the judgment by default and grant the petitioner a hearing on the merits raised by the denaturalization complaint. *

It is so ordered.

MR. JUSTICE BURTON, while agreeing with MR. JUSTICE REED that a judgment of denaturalization may be entered by default without a further showing than was made in this case, believes that, under the special circumstances here shown on behalf of this petitioner, the judgment by default should be set aside and the petitioner should be granted a hearing on the merits of the issues raised by the denaturalization complaint. He therefore joins in the judgment of the Court as limited to the special facts of this case, and without expressing an opinion upon any issues not now before this Court.

* [This judgment modified, 336 U.S. 942.]

* Amended Rule 60(b) provides:

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which

by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, of other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, U.S.C. Title 28, § 118, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

MR. JUSTICE RUTLEDGE, with whom MR. JUSTICE MURPHY agrees, concurring in the result.

To treat a denaturalization proceeding, whether procedurally or otherwise, as if it were nothing more than a suit for damages for breach of contract or one to recover overtime pay ignores, in my view, every consideration of justice and of reality concerning the substance of the suit and what is at stake.

To take away a man's citizenship deprives him of a right no less precious than life or liberty -- indeed of one which today comprehends those rights and almost all others. [Footnote 1] To lay upon the citizen the punishment of exile

Page 335 U. S. 617

for committing murder, or even treason, is a penalty thus far unknown to our law and, at most, but doubtfully within Congress' power. U.S.Const., Amend. VIII. Yet, by the device or label of a civil suit, carried forward with none of the safeguards of criminal procedure provided by the Bill of Rights, this most comprehensive and basic right of all, so it has been held, can be taken away, and in its wake may follow the most cruel penalty of banishment.

No such procedures could strip a natural-born citizen of his birthright or lay him open to such a penalty. I have stated heretofore the reasons why I think the Constitution does not countenance either that deprivation or the ensuing liability to such a punishment for

naturalized citizens. *Schneiderman v. United States,* 320 U. S. 118, concurring opinion 320 U. S. 165; *Knauer v. United States,* 328 U. S. 654, dissenting opinion 328 U. S. 675.

Those views of the substantive rights of naturalized citizens have not prevailed here. But the *Schneiderman* decision and *Baumgartner v. United States,* 322 U. S. 665, required a burden of proof for denaturalization which in effect approximates the burden demanded for conviction in criminal cases -- namely, proof beyond a reasonable doubt of the charges alleged as cause for denaturalization. [Footnote 2] This was, in itself and to that extent, recognition that ordinary civil procedures, such as apply in suits upon contracts and to enforce other purely civil liabilities, do not suffice for denaturalization and all its consequences.

Page 335 U. S. 618

More than this it was not necessary to decide in the cases cited. No less should be required, in view of the substantial kinship of the proceedings with criminal causes, whatever their technical form or label. *Cf. Knauer v. United States,* 328 U. S. 654, dissenting opinion 328 U. S. 675, 328 U. S. 678.

This case, however, presents squarely the issue whether, beyond any question of burden or weight of proof, the ordinary civil procedures can suffice to take away the naturalized citizen's status and lay him open to permanent exile, with all the fateful consequences following for himself and his family, often, as in this case, native-born Americans. The question in its narrower aspect is indeed whether those consequences can be inflicted without any proof whatever.

Under our system, petitioner could not be convicted or fined for mail fraud, over-ceiling sales, or unlawfully possessing gasoline ration coupons upon a judgment taken by default, much less under the circumstances this record discloses to have been responsible for the default. Yet his basic right to all the protections afforded him as a citizen by the Constitution can be stripped from him, so it is now urged, without an iota of proof, without his appearance or presence in court, without counsel employed or assigned to defend that right, and indeed with no real opportunity on his part to prepare and make such a defense. The case thus goes far beyond the Court's ruling in *Knauer v. United States, supra.* And, in my opinion, it brings to clearer focus whether, beyond the matter of satisfying the burden of proof required by the *Schneiderman* and *Baumgartner* cases, the *Knauer* case rightly permitted denaturalization through the civil procedures there pursued. [Footnote 3]

Page 335 U. S. 619

If, in deference to the Court's rulings, we are to continue to have two classes of citizens in

If, in deference to the Court's rulings, we are to continue to have two classes of citizens in this country, one secure in their status and the other subject at every moment to its loss by proceedings not applicable to the other class, *cf. Schneiderman v. United States, supra,* concurring opinion at 320 U. S. 167, *Knauer v. United States, supra,* dissenting opinion at 328 U. S. 678, I cannot assent to the idea that the ordinary rules of procedure in civil causes afford any standard sufficient to safeguard the status given to naturalized citizens. If citizenship is to be defeasible for naturalized citizens other than by voluntary renunciation or other causes applicable to native-born citizens, [Footnote 4] the defeasance, it seems to me, should be surrounded by no lesser protections than those securing all citizens against conviction for crime. Regardless of the name given it, the denaturalization proceeding, when it is successful, has all the consequences and effects of a penal or criminal conviction except that the ensuing liability to deportation is a greater penalty than is generally inflicted for crime.

Regarding the proceeding in this light, I do not assent in principle that the judgment of denaturalization can be taken by default, or that the rules of civil procedure applicable in ordinary civil causes apply to permit such a result.

The grounds which I have stated for these conclusions logically would lead to casting my vote to reverse the judgment, with instructions to dismiss the proceedings. Since, however, that disposition does not receive the concurrence of a majority, I join with those who, on other grounds, think that the judgment should be reversed and remanded for a new trial, in voting so to dispose of the cause. Accordingly, I concur in the Court's judgment. I may add that, upon the assumption that rules of civil

Page 335 U. S. 620

procedure may apply in denaturalization proceedings, I am substantially in accord with the views expressed by MR. JUSTICE BLACK.

[Footnote 1]

Cf. Ng Fung Ho v. White, 259 U. S. 276, 259 U. S. 284; *Schneiderman v. United States,* 320 U. S. 118, 320 U. S. 112, and concurring opinion 320 U. S. 165; *Knauer v. United States,* 328 U. S. 654, dissenting opinion 328 U. S. 675.

[Footnote 2]

See Schneiderman v. United States, 320 U. S. 118, 320 U. S. 125, 320 U. S. 136, 320 U. S. 153-154, 320 U. S. 158-159. At page 320 U. S. 158, we said:

"We conclude that the Government has not carried its burden of proving by 'clear

"We conclude that the Government has not carried its burden of proving by 'clear, unequivocal, and convincing' evidence which does not leave 'the issue in doubt' that petitioner obtained his citizenship illegally."

The concurring opinion in *Knauer v. United States,* 328 U. S. 654, 328 U. S. 674, went upon the basis of satisfaction "beyond all reasonable doubt" concerning the proof of the grounds asserted for denaturalization.

[Footnote 3]

In the view of those dissenting, as well as that of the majority in the *Knauer* case, the Government had satisfied fully the burden of proof required by the *Schneiderman* and *Baumgartner* decisions. *See* 328 U. S. 328 U.S. 654, 328 U. S. 675.

[Footnote 4]

See Knauer v. United States, 328 U. S. 654, dissenting opinion 328 U. S. 675-676.

MR. JUSTICE REED, with whom the CHIEF JUSTICE and MR. JUSTICE JACKSON join, dissenting.

In May, 1942, the United States began proceedings in the United States District Court for the District of New Jersey against Klapprott under § 338 of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U.S.C. § 738 [Footnote 2/1] to cancel his certificate of naturalization, issued in 1933, on the ground that he had taken a false oath of allegiance to procure the certificate. The complaint alleged that, at the time he took the oath, petitioner knew that he was not attached to the principles of the Constitution of the United States and did not intend to renounce his allegiance to the German Reich; that petitioner "is and has been notoriously and openly one of the chief leaders and active members of the German-American Bund" and other organizations sympathetic to German Reich;

Page 335 U. S. 621

and that he had made

"numerous statements indicating his allegiance and loyalty to the German Reich and his disregard and disrespect for the principles and institutions of the United States of America."

Petitioner was personally served with summons on May 15, 1942. Without the introduction of any evidence, judgment by default was entered against him on July 17, 1942, when he failed to answer within the sixty days allowed by § 338, *supra,* 335 U.S. 601fn2/1|>note 1.

In January, 1947, four and one-half years later, Klapprott petitioned the same district court

In January, 1947, four and one-half years later, Klapprott petitioned the same district court which had entered the judgment of denaturalization for an order to show cause why that judgment should not be vacated. In an affidavit appended to his petition, he stated, after admitting receipt of the summons and complaint, that it was impossible for him to enter a defense, and intimated that he was unable to take steps to have the judgment vacated prior to 1947. There is no allegation that he was ignorant of the entry of the judgment for any period of time. *See* Rules 5(a) and 77(d) of the Federal Rules of Civil Procedure. The reasons contained in the affidavit in support of this general statement can be summarized as follows: petitioner, as a result of serious illness, was in poor health and "unable to get around very well" at the time summons was served. Since he had no money with which to retain lawyer, he drafted a letter to the American Civil Liberties Union of New York requesting legal assistance. On July 7, 1942, seven days before time for filing appearance expired, he was arrested by federal authorities on an indictment in the United States District Court for the Southern District of New York, charging him with a conspiracy to violate the Selective Service Act. The letter was taken by these authorities, and, so far as Klapprott knew, never mailed. The court appointed a lawyer to defend petitioner in the New York conspiracy case. Petitioner informed him of the denaturalization

Page 335 U. S. 622

proceeding, to which the lawyer promised to attend, but which he neglected, allowing judgment to be entered by default. Because of the lengthy trial and exceedingly high bail in connection with the conspiracy charge, petitioner was still unable to take steps to have the judgment vacated. He was found guilty of the conspiracy [Footnote 2/2] and committed to the Federal Correctional Institution at Milan, Michigan. On January 30, 1944, pursuant to another indictment -- the "Sedition Case" [Footnote 2/3] in the United States District Court for the District of Columbia -- he was transferred to the District of Columbia. He remained in custody throughout the trial of this case until November 21, 1946, when the indictment was dismissed. Petitioner was then released, but was immediately remanded to custody at Ellis Island for the purpose of deportation. From there, he began this attempt to have the judgment of denaturalization vacated.

Petitioner, in his affidavit, denied the allegations in the government's original complaint and asserted that he had a good and legal defense to the action for cancelation of his certificate of naturalization.

If petitioner is entitled to relief from the default judgment, he must qualify under one or more of the provisions of Rule 60(b) of the Federal Rules of Civil Procedure. [Footnote 2/4] I do not think that his petition or the affidavit

in support thereof meets the requirements of that Rule for vacating a judgment.

First. The Court assumes, as I think it must, that § 338 of the Nationality Act authorizes default judgments of denaturalization. So much is clear from the provisions in (b) of that section for notice by publication and in (c) for the denaturalization of one who has left the United States to establish a permanent residence elsewhere. The action authorized by the section is civil. [Footnote 2/5] The general rule in civil actions is that notice places on the party to whom it is directed the responsibility to appear and defend or face the consequences. Rule 55 of the Federal Rules of Civil Procedure provides for default judgments

in civil actions where the party against whom relief is sought fails to plead. The instances enumerated in (b)(2) and (e) of that rule, as those where a default judgment shall not be entered, do not include this case.

The Court suggests under caption Second, however, that the presentation of evidence is a prerequisite to the entry of such a judgment, and that a default judgment entered without evidence is void, and therefore subject to vacation without a definite time limit under (4) of Rule 60(b). It points out that *Schneiderman v. United States,* 320 U. S. 118, held that "clear and convincing" evidence is necessary to support a judgment of denaturalization. The holding in that case, however, must be viewed in its setting, *i.e.,* a contested case. The case does not support the proposition that any evidence, clear and convincing or otherwise, is required in an uncontested denaturalization proceeding. The general rule in civil actions is that none is necessary. Even though deportation is a most serious disaster to the deportee, it is founded here on uncontested allegations of adequate facts that must be taken as true. Although the committee which formulated the Federal Rules of Civil Procedure twice made a hearing on evidence a requirement for the entry of a default judgment, Rule 55(b)(2) and (e), no such requirement was expressed for cases of this sort. Except for cases of the sort specified in (b)(2) and (e), and those where the amount of damages is in question, I think the meaning of the Rule is that a default is the equivalent of an admission of allegations which are well pleaded.

The Court seeks support in the fact that other sections of the Nationality Act, 8 U.S.C. §§ 738(e) and 746, provide for denaturalization when the alien has been convicted of the crime of procuring his certificate of naturalization by knowingly false statements under oath. The protections which safeguard the alien in such a

criminal prosecution are sought to be extended to him in civil proceedings under § 738. To me, the very existence in the Act of two parallel methods of denaturalization indicates that the protections inherent in the criminal proceeding are not intended to apply to the civil proceeding such as we have here.

Since no expression of Congress can be found, either in the Federal Rules or in the Nationality Act, to the effect that evidence is necessary to validate a civil default judgment of denaturalization, I do not think it is the function of this Court to supply one.

The suggestion of the Court in caption *Fifth* that the government's complaint does not state a cause of action seems unwarranted. Certainly the government is not required to plead all its evidence. Since the complaint alleged fraud, and specified in paragraph 6 thereof the circumstances constituting fraud, set out in the first paragraph of this dissent, I think *Knauer v. United States,* 328 U. S. 654, belies the suggestion that the complaint is defective.

Thus, I dissent from the suggestion that the judgment against Klapprott can be vacated as void under Rule 60(b)(4).

Second. The Court holds that petitioner is entitled to relief under (6), the "other reason" clause of Rule 60(b). This follows, it is said, from his allegations that he was held in custody and subjected to several criminal prosecutions by the United States. As I see it, such allegations add nothing to the single ground on which relief could have been based -- *i.e.,* "mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1). I do not mean to say that an arrest and a subsequent period of imprisonment which interfered to the extent of depriving him of the opportunity to get legal assistance or the ability to litigate would not entitle him to relief. In view of the facts set out in petitioner's own affidavit,

however, it is difficult to see how imprisonment subjected him to any injustice in this case, or how it furnishes him with an additional ground for relief. Thus, petitioner does not allege that he requested the return to him or the mailing of his letter to the American Civil Liberties Union. He does not -- in fact, could not -- claim that imprisonment deprived him of the right to counsel. On the contrary, he admits that counsel was made available in time to enter an appearance in the denaturalization proceeding, but that counsel negligently failed to do so. Petitioner's ability to litigate during this period of purportedly drastic confinement is illustrated by the fact that, in 1945, as stated in his affidavit, he began and continued until its unsuccessful termination a suit to enjoin the Department of Justice from

deporting him.

Since the facts alleged amount to a showing of mistake, inadvertence, or excusable neglect only, and since a definite time limit of one year is imposed on relief based on these grounds, the Rule cannot be said to contemplate a remedy without time limit based on the same facts. Otherwise, the word "other" in clause (6) is rendered meaningless. [Footnote 2/6]

The Court intimates that petitioner was woefully mistreated by the government. If by this it is meant that he is entitled to relief from judgment based on "misconduct of an adverse party," Rule 60(b)(3), the answer is that relief on this ground is limited to one year from the judgment. On analysis, however, the suggestion that petitioner's trials have been carried on in a way contrary to concepts of justice as understood in the United States and in a manner incompatible with the pattern of American justice falls flat in view of the simple facts. Klapprott had counsel and open hearings. The courts have cleared him of complicity in a conspiracy to impede the

Page 335 U. S. 627

raising of an army, and have dismissed a prosecution for seditious conspiracy. To be cleared on these charges can have no effect upon the propriety of his deportation for violation of our naturalization laws.

The limitations imposed by Rule 60(b) are expressions of the policy of finally concluding litigation within a reasonable time. Such termination of lawsuits is essential to the efficient administration of justice. I would not frustrate the policy by allowing litigants to upset judgments of long standing on allegations such as Klapprott's.

[Footnote 2/1]

"(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

"(b) The party to whom was granted the naturalization alleged to have been fraudulently or illegally procured shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice in which to make answer to the petition of the United States, and

if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought."

[Footnote 2/2]

Conviction subsequently reversed in *Keegan v. United States,* 325 U. S. 478.

[Footnote 2/3]

United States v. McWilliams et al., 82 U.S.App.D.C. 259, 163 F.2d 695.

[Footnote 2/4]

Rule 60(b):

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, U.S.C. Title 28, § 118, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

[Footnote 2/5]

A subsequent section, 54 Stat. 1163, 8 U.S.C. § 746(a)(1) and (d), specifically providing for the criminal penalties of fine and imprisonment for the utterance of a false oath such as this

indicates an intention that proceedings under § 338 are not criminal.

Cf. Knauer v. United States, 328 U. S. 654, 328 U. S. 671; *Luria v. United States,* 231 U. S. 9, 231 U. S. 27-28; *Sourino v. United States,* 86 F.2d 309; *United States v. Wezel,* 49 F. Supp. 16, 17.

[Footnote 2/6]

Cf. Wallace v. United States, 142 F.2d 240, 244.

MR. JUSTICE FRANKFURTER, dissenting.

American citizenship other than when acquired by birth rests on a judicial judgment of naturalization. *Tutun v. United States,* 270 U. S. 568. Congress has explicitly defined the procedures for annulling such a judgment. *Johannessen v. United States,* 225 U. S. 227; *Luria v. United States,* 231 U. S. 9; § 15 of the Act of June 29, 1906, 34 Stat. 596, 601, now formulated in 54 Stat. 1158, 8 U.S.C. § 738. Neither in its terms nor on a fair interpretation of our naturalization laws has Congress indicated that such a judgment -- the certificate of naturalization -- cannot be annulled by default, that is, without active contest against such annulment, provided that ample opportunity has in fact, been afforded to a citizen to contest. This Court is not justified in adding a requirement to the cancelation proceedings that Congress has seen fit to withhold unless some provision of the Constitution so demands. The only possible provision on which an argument can be based that citizenship cannot be canceled by a default judgment is the Due Process Clause of the Fifth Amendment. I reject the suggestion that it offends due process for a judgment of naturalization obtained by fraud to be set aside if the defrauding alien is afforded ample opportunity to contest the Government's

Page 335 U. S. 628

claim that he obtained his citizenship through fraud and chooses not to avail himself of that opportunity, but allows a judgment of cancelation to go by default.

But, in rejecting the contention that citizenship cannot be lost by a default judgment, one does not necessarily embrace the other extreme of assimilating a naturalization judgment to any other civil judgment. This Court has held that, because a naturalization judgment involves interests of a different order from those involved in other civil proceedings, the annulment of such a judgment is guided by considerations qualitatively different from those that govern annulment of ordinary judgments. *Schneiderman v. United States,* 320 U. S. 118; *Baumgartner v. United States,* 322 U. S. 665. The considerations that set a contested proceeding for canceling a naturalization judgment apart from other suits to annul a

judgment are equally relevant to a default judgment causing such cancelation. To be sure, the public interest in putting a fair end to litigation and in not allowing people to sleep in their rights has its rightful claim even in proceedings resulting in deprivation of citizenship. But because citizenship has such ramifying significance in the fate of an individual and of those dependent upon him, the public interest to be safeguarded in the administration of justice will not be neglected if courts look more sharply and deal less summarily when asked to set aside a default judgment for cancelation of citizenship than is required of them in setting aside other default judgments.

It is in the light of these general considerations that I would dispose of the present case. I deem it governed by the liberalizing amendment to Rule 60(b) of the Federal Rules of Civil Procedure even though that became effective after the decision below. It is, of course, not a hard and fast rule that procedural changes are

Page 335 U. S. 629

to be prospectively applied to a pending litigation at any stage at which it may be possible to do so without working an injustice. But, since citizenship is at stake, and this is, in effect, an appeal in equity to be dealt with as of the time of adjudication, it seems more consonant with equitable considerations to judge the case on the basis of the Rule now in force, even though the lower court did not have the opportunity to apply it.

If the petitioner had paid no attention to the proceeding brought to revoke his citizenship, he would, in my opinion, have no ground for opening up the default judgment simply because, during all the years in question, he was incarcerated. Men can press their claims from behind prison walls, as is proved by the fact that perhaps a third of the cases for which review is sought in this Court come from penitentiaries. But Klapprott was not indifferent to the proceeding to set aside his citizenship. He took active measures of defense which were aborted through no fault of his own. To be sure, he did not follow up these efforts, but what he is saying in the motion made after his criminal cases were ended is, in substance, that he was so preoccupied with defending himself against the dire charges of sedition (the conviction for which this Court set aside in *Keegan v. United States,* 325 U. S. 478) and the threat of deportation that the New Jersey cancelation proceeding naturally dropped from his mind after he had taken what he thought appropriate steps for his protection. The Government in effect demurred to this contention, and the District Court's action, affirmed by the Court of Appeals, practically ruled as a matter of law that the claim of Klapprott, even if true, affords no relief. It is to me significant that one of the two affirming judges of the Court of Appeals decided the case largely on a close reading of the old Rule 60(b), and that the other rested his case on laches, while this Court fails to draw on laches for the support of

its conclusion.

Page 335 U. S. 630

Rule 60(b) now provides five grounds for relief from default judgments, and a sixth catch-all ground, "any other reason justifying relief from the operation of the judgment."* The only one of the first five reasons to which Klapprott's conduct, as explicitly narrated, may plausibly be assigned is that of "excusable neglect," relief from which must be obtained within a year after a default judgment. But I think that, if the inferences fairly to be drawn from the circumstances narrated by Klapprott were found to be true, they would take his case outside of the characterization of "neglect," because "neglect," in the context of its subject matter, carries the idea of negligence and not merely of nonaction, and would constitute a different reason "justifying relief from the operation of the judgment." When a claim for citizenship is at stake, we ought to read a complaint with a liberality that is the antithesis of Baron Parke's "almost superstitious reverence for the dark technicalities of special pleading."

Page 335 U. S. 631

See 15 Dict.Nat.Giog. 226. Therefore, what fairly emanates from such a complaint should be treated as though formally alleged. And so I would not deny Klapprott an opportunity, even at this late stage, to establish as a psychological fact what his allegations imply -- namely, that the harassing criminal proceedings against him had so preoccupied his mind that he was not guilty of negligence in failing to do more than he initially did in seeking to defend the denaturalization proceeding. But I would not regard such a psychological issue established as a fact merely because the Government in effect demurred to his complaint. Since the nature of the ultimate issue -- forfeiture of citizenship -- is not to be governed by the ordinary rules of default judgments, neither should the claim of a state of mind be taken as proved simply because the Government, feeling itself justified in resting on a purely legal defense, did not deny the existence of that state of mind.

To rule out the opportunity to establish the psychological implications of the complaint would be to make its denial a rule of law. It would not take much of the trial court's time to allow Klapprott to establish them if he can. The time would be well spent even if he should fail to do so; it would be more consonant with the safeguards which this Court has properly thrown around the withdrawal of citizenship than is the summary disposition that was made. But I would require Klapprott to satisfy the trial judge that what he impliedly alleges is true, and it is here that I part company with the majority.

*

"RULE 60. RELIEF FROM JUDGMENT OR ORDER."

"* * * *"

"(b) MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. . . ."

Klapprott v. United States (336 U.S. 942) — Opinion of the Court

United States Supreme Court

336 U.S. 942

KLAPPROTT v. UNITED STATES.

Argued: Oct. 20, 1948. --- Decided: Jan 17, 1949

This case raises questions concerning the power of federal district courts to enter default judgments depriving naturalized persons of their citizenship without hearings or evidence, and to set aside default judgments under some circumstances four years or more after the default judgments were entered.

The petitioner was born in Germany. In 1933 after a hearing a New Jersey state court entered a judgment admitting him to United States citizenship. Petitioner then took an oath renouncing allegiance to Germany and promising to bear true faith and allegiance to the United States, whereupon the court granted him a certificate of naturalization. See 8 U.S.C. § 735, 8 U.S.C.A. § 735.

Nine years later, the United States Attorney, acting pursuant to 8 U.S.C. § 738, 8 U.S.C.A. § 738, filed a complaint in the United States District Court of New Jersey to set aside

the state court's judgment and cancel petitioner's certificate of naturalization. The complaint alleged generally that petitioner's oath of allegiance, etc., was false, that at the time of taking it petitioner well knew that he was not attached to the principles of the United States Constitution, and that he had not in fact intended thereafter to bear true allegiance to the United States or renounce and discontinue his allegiance and fidelity to Germany. In particular the complaint charged no more than that petitioner subsequent to 1935 had evidenced his loyalty to Germany and his disloyalty to this country by writings and speeches; that he was in 1942 and had been before that time a leader and member of the German American Bund and other organizations, the principles of which were alleged to be inimical to the Constitution of the United States and the happiness of its people; that these organizations were propagated and encouraged by enemies of the United States who believed in the ideology enunciated by Adolph Hitler. For the requirement that allegations of fraud be particularized, see Rule 9(b) of the Rules of Civil Procedure, 28 U.S.C.A.

Petitioner, though served with notice May 15, 1942, failed to answer the complaint within sixty days as required by 8 U.S.C. § 738(b), 8 U.S.C.A. § 738(b). But on July 7, 1942, before expiration of the sixty days, petitioner was arrested and confined in a New York jail on criminal charges brought by the United States. On July 17, 1942, the F deral District Court of New Jersey on motion of the United States

Attorney, entered a judgment by default against petitioner in the denaturalization proceedings, set aside the 1933 state court judgment admitting him to citizenship, and cancelled his certificate of naturalization.

More than four years after the default judgment was rendered against him, and while petitioner was still a government prisoner, he filed in the District Court a verified petition praying that the court set aside the judgment. The United States did not deny any of the facts alleged in the verified petition. The District Court, necessarily accepting the undenied allegations as true, held that the petitioner had been guilty of 'wilful and inexcusable neglect' and accordingly dismissed the petition 'because of the defendant's laches.' 6 F.R.D. 450, 451. The Circuit Court of Appeals, rejecting petitioner's several contentions, affirmed, one judge dissenting. 3 Cir., 166 F.2d 273.

In considering the case we also must accept as true the undenied allegations of the petitioner. These facts are of great importance in considering some of the legal contentions raised. The alleged facts chronologically arranged are as follows:

Nov. 16. Petitioner was naturalized by order of court.

Nov. 17. Petitioner married an American citizen and now has one child by that marriage.

Spring. Petitioner was seriously ill. The illness left him financially poor and so weakened that he was unable to work.

May 12 United States Attorney filed the complaint in the United States District Court of New Jersey to cancel petitioner's citizenship.

May 15. Complaint served on petitioner. He had no money to hire a lawyer. He drew a draft of an answer to the complaint and wrote a letter to the American Civil Liberties Union asking that they represent him without fee.

July 7. Arrested under federal indictment charging petitioner and others with conspiracy to violate the Selective Service Act, 50 U.S.C.A. Appendix, § 301 et seq. Taken before United States Commissioner at Newark, New Jersey; later carried to New York by Federal Bureau of Investigation agents, there put in prison, unable to make bond of $25,000 under which he was held. His letter to Civil Liberties Union taken from him by agents of the FBI eight days before expiration of time to answer cancellation of citizenship charge in New Jersey. The agents retained the letter, never mailing it.

July 17. Judgment by default entered by New Jersey court in citizenship cancellation case. At the time, petitioner was in a New York jail awaiting trial under the selective service conspiracy case. No evidence was offered by the

Government to prove its charges in the complaint for cancellation of citizenship. The government's case consisted or no more than a verification of this complaint by an FBI agent on information and belief, based on the agent's having read FBI files concerning petitioner.

July 7, 1942, date of arrest, to June 1943. While petitioner was still in jail, a lawyer was appointed by the New York District Court to defend petitioner in the selective service criminal case. At his request the New York lawyer promised to help him also in the New Jersey cancellation proceedings, but the lawyer neglected to do so. Petitioner was convicted and sentenced to penitentiary.

June. Petitioner elected to begin service of the New York sentence pending appeal, was carried to and confined in federal institution in Michigan where he remained until January 30, 1944. *[606]*

Jan. 30. Petitioner transferred from federal prison in Michigan to jail in the District of Columbia to be tried with twenty-nine other persons on a charge of sedition.

June 11. This Court reversed petitioner's New York conviction, Keegan v. United States, 325 U.S. 478, 65 S.Ct. 1203, 89 L.Ed. 1745, but he continued to be held in the District of Columbia jail unt l November 22, 1946.

Nov. 22 District of Columbia sedition case dismissed. United States v. McWilliams et al., D.C.Cir., 163 F.2d 695. The case had previously been tried for eight months, but before completion a mistrial was declared because of the death of the presiding judge. Shortly after dismissal of the sedition case petitioner, still a prisoner of the United States, was carried to Ellis Island for deportation on account of the cancellation of his citizenship under the New Jersey default judgment.

Dec. 9 This Court denied certiorari in three court actions unsuccessfully prosecuted by the Citizen's Protective League on behalf of 159 individuals including petitioner. (The League was a non-profit organization 'to insure equal rights for all and to safeguard the constitutional rights of all persons.' Citizens Protective League v. Clark, 81 U.S.App.D.C. 116, 155 F.2d 290, 291, certiorari denied, 329 U.S. 787, 67 S.Ct. 354, 91 L.Ed. 674. The complaint prayed that the Attorney General be enjoined from deporting the 159 individuals. Petitioner had been ordered deported March 27, 1946, while he was in the District of Columbia jail charged with sedition.)

Dec. 12. Three days after this Court's denial of certiorari, in the action brought by the Citizens Protective League, petitioner, still a government prisoner at Ellis Island, stated the substance of the foregoing facts under oath and a petition was filed on his behalf in the New Jersey District Court to vacate the default judgment and grant him a trial

on the merits. Petitioner's verified motion also alleged that the government's charges against him in the New Jersey court were untrue and he strongly asserted his loyalty to the United States.

Feb. 7. District judge dismissed the petitioner's motion holding that petitioner had been guilty of laches in not arranging while in prison for defense of the cancellation of citizenship charge.

Thus, this petitioner has now been held continuously in prison by the Government for six and one-half years. During that period he served one and one-half years of a penitentiary punishment under a conviction which this Court held was improper. He was also held in the District of Columbia jail two years and ten months under an indictment that was later dismissed. It is clear therefore, that for four and one-half years this petitioner was held in prison on charges that the Government was unable to sustain. No other conclusion can be drawn except that this long imprisonment was wrongful. Whether the judgment by default should be set aside must therefore be decided on the undenied allegations that the Government, largely through the action of FBI agents, wrongfully held petitioner in New York, Michigan, and District of Columbia prisons, while the same Government, largely acting through the same or other FBI agents, caused a district court to revoke petitioner's citizenship on the ground that petitioner had failed to make

appearance and defend in the New Jersey courts, although petitioner was at the time without funds to hire a lawyer.

First. Amended Rule 60(b) of the Federal Rule of Civil Procedure became effective March 19, 1948. [1] That was after the District Court denied the motion to set aside this default judgment and after affirmance of the District Court's action by the Court of Appeals. For these reasons the Government contends that amended Rule 60(b) should not be applied here. In some respects, the amended rule grants courts a broader power to set aside judgments than did the old rule. Petitioner should be afforded the benefit of the more liberal amended 60(b). For Rule 86(b) made amended 60(b) applicable to 'further proceedings in actions then pending' unless it 'would work injustice' so to apply the rule. It seems inconceivable that one could think it would work any injustice to the Government to measure the petitioner's rights by this amended rule in th § case where all he asks is a chance to try the denaturalization proceeding on its merits. Amended Rule 60(b) should be applied.

Second. Amended Rule 60(b) authorizes a court to set aside 'a void judgment' without regard to the limitation of a year applicable to motions to set aside on some other grounds. It is contended that this judgment is void because rendered by a District Court without hearing any evidence. The judgment is void if the hearing of evidence is a legal prerequisite to rendition of a valid default judgment in denaturalization proceedings. While 5 U.S.C. § 738, 8

U.S.C.A. § 738, under which this denaturalization complaint was filed, plainly authorizes courts to revoke the citizenship of naturalized citizens after notice and hearing, it contains no explicit authorization for rendition of default judgments. Congressional intention to authorize court action in the absence of a citizen might be implied, however, from the provision for notice by publication in § 738(b). Aside from possible constitutional questions, it may therefore be assumed that the section authorizes rendition of a denaturalization judgment in a defendant's absence. But it does not necessarily follow that a court may also render judgment without proof of the charges made in a denaturalization complaint. And there is strong indication in § 738 and companion sections that Congress did not intend to authorize courts automatically to deprive people of their citizenship for failure to appear.

8 U.S.C. § 746, 8 U.S.C.A. § 746, [2] makes it a felony for applicants for naturalization or others to violate federal laws relating to naturalization. Had petitioner been found guilty of making the false oath here charged, he could have been convicted of and punished for a felony under this section. But he could have been convicted only after indictment and a jury trial at which he would have been present and represented by counsel. A conviction would have required a proof of guilt beyond a reasonable doubt, on testimony of witnesses given in the presence of the accused who would have had an opportunity to cross-examine the witnesses against him. In the event of such a conviction under

required procedural safeguards, § 738(e) authorizes courts to revoke citizenship and cancel naturalization certificates. There is a b oad gap between a § 738 denaturalization thus accomplished and the one ordered by the court in this proceeding. For here, the defendant was absent, no counsel or other representative of his was present, no evidence was offered, and the only basis for action was a complaint containing allegations, questionable from a procedural and substantive standpoint, verified by an FBI agent on information acquired by him from looking at hearsay statements in an FBI dossier. The protection Congress afforded in § 738(e) emphasizes the unfairness that would result from permitting denaturalizations in other § 738 proceedings without any evidence at all.

When we look to federal statutes other than § 738 we find no command and no express authority for courts to enter denaturalization judgments by default without proof of facts to support the judgment. No such authority or command is contained in Rule 55 of the Federal Rules of Civil Procedure which rule relates to default judgments. Section (e) of Rule 55 expressly bars all judgments against the United States without proof, but in cannot be inferred from this that proof is never required as a prerequisite to default judgments against all defendants other than the United States. For subdivision (b)(2) of Rule 55 expressly provides for representation of defaulting parties in some instances. Subdivision (b)(2) also directs that in certain specified instances courts, before entering judgments after default of

appearance, shall make investigations, conduct hearings, and even grant jury trial. In addition to these particularized instances, subdivision (b)(2) also provides for court hearings before default judgment where 'it is necessary * * * to establish the truth of any averment by evidence or to make an investigation of any other matter.'

Thus it appears that statutes and rules have largely left for judicial determination the type of cases in which hearings and proof should precede default judgments. In this situation it is the final responsibility of this

American citizenship is an extraordinarily severe penalty. The consequences of such a deprivation may even rest heavily upon his children. 8 U.S.C. § 719, 8 U.S.C.A. § 719. As a result of the denaturalization here, petitioner has been ordered deported. 'To deport one who son claims to be a citizen obviously deprives him of liberty * * *. It may result also in loss of both property and life, or of all that makes life worth living.' Ng Fung Ho v. White, 259 U.S. 276, 284, 42 S.Ct. 492, 495, 66 L.Ed. 938. Because denaturalization proceedings have not fallen within the technical classification of crimes is hardly a satisfactory reason for allowing denaturalization without proof while requiring proof to support a mere money fine or a short imprisonment.

Furthermore, because of the grave consequences incident to denaturalization proceedings we have held that a burden rests on the Government to prove its charges in such cases by c ear, unequivocal and convincing evidence which does not leave the issue in doubt. Schneiderman v. United States, 320 U.S. 118, 158, 63 S.Ct. 1333, 1352, 87 L.Ed. 1796. This burden is substantially identical with that required in criminal cases-proof beyond a reasonable doubt. The same factors that caused us to require proof of this nature as a prerequisite to denaturalization judgments in hearings with the defendant present, apply at least with equal force to proceedings in which a citizen is stripped of his citizenship rights in his absence. Assuming that no additional procedural safeguards are required, it is our opinion that

courts should not in § 738 proceedings deprive a person of his citizenship until the Government first offers proof of its charges sufficient to satisfy the burden imposed on it, even in cases where the defendant has made default in appearance.

Third. But even if this judgment of denaturalization is not treated as void, there remain other compelling reasons under amended 60(b) for relieving the petitioner of its effect. Amended 60(b) provides for setting aside a judgment for any one of five specified reasons or for 'any other reason justifying relief from the operation of the judgment.' The first of the five specified reasons is 'mistake, inadvertence, surprise, or excusable neglect'. To take advantage of this reason the Rule requires a litigant to ask relief 'not more than one year after the judgment, order, or proceeding was entered or taken.' It is contended that the one-year limitation bars petitioner on the premise that the petition to set aside the judgment showed, at most, nothing but 'excusable neglect.' And of course, the one year limitation would control if no more than 'neglect' was disclosed by the petition. In that event the petitioner could not avail himself of the broad 'any other reason' clause of 60(b). But petitioner's allegations set up an extraordinary situation which cannot fairly or logically be classified as mere 'neglect' on his part. The undenied facts set out in the petition reveal far more than a failure to defend the denaturalization charges due to inadvertence, indifference, or careless disregard of consequences. For before, at the

time, and after the default judgment was entered, petitioner was held in jail in New York, Michigan, and the District of Columbia by the United States, his adversary in the denaturalization proceedings. Without funds to hire a lawyer, petitioner was defended by appointed counsel in the criminal cases. Thus petitioner's prayer to set aside the default judgment did not rest on mere allegations of 'excusable neglect.' The foregoing allegations and others in the petition tend to support petitioner's argument that he was deprived of any reasonable opportunity to make a defense to the criminal charges instigated by officers of the very United States agency which supplied the secondhand information upon which his citizenship was taken away from him in his absence. The basis of his petition was not that he had neglected to act in his own defense, but that in jail as he was, weakened from illness, without a lawyer in the denaturalization proceedings or funds to hire one, disturbed and fully occupied in efforts to protect himself against the gravest criminal charges, he was no more able to defend himself in the New Jersey court than he would have been had he never received notice of the charges. Under such circumstances petitioner's prayer for setting aside the default judgment should not be considered only under the excusable neglect, but also under the 'other reason' clause of 60(b), to which the one year limitation provision does not apply.

Fourth. Thus we come to the question whether petitioner's undenied allegations show facts 'justifying relief from the

operation of the judgment.' It is contended that the 'other reason' clause should be interpreted so as to deny relief except under circumstances sufficient to have authorized relief under the common law writs of *coram nobis* and *audita querela*, and that the facts shown here would not have justified relief under these common law proceedings. One thing wrong with this contention is that few courts ever have agreed as to what circumstances would justify relief under these old remedies. To accept this contention would therefore introduce needless confusion in the administration of 60(b) and would also circumscribe it within needless and uncertain boundaries. Furthermore 60(b) strongly indicates on its face that courts no longer are to be hemmed in by the uncertain boundaries of these and other common law remedial tools. In simple English, the language of the 'other reason' clause, for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.

Fifth. The undenied allegations already set out show that a citizen was stripped of his citizenship by his Government, without evidence, a hearing, or the benefit of counsel, at a time when his Government was then holding the citizen in jail with no reasonable opportunity for him effectively to defend his right to citizenship. Furthermore, the complaint in the denaturalization proceeding strongly indicates that the Government here is proceeding on inadequate facts, just as it did in the criminal cases it brought against petitioner.

For if the Government had been able on a trial to prove no more than the particular facts it alleged in its denaturalization complaint, it is doubtful if its proof could have been held sufficient to revoke petitioner's citizenship under our holdings in Baumgartner v. United States, 322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed. 1525; Schneiderman v. United States, 320 U.S. 118, 63 S.Ct. 1333, 87 L.Ed. 1796; Knauer v. United States, 328 U.S. 654, 659, 66 S.Ct. 1304, 1307, 90 L.Ed. 1500, and see Rule 9(b) of the Rules of Civil Procedure. And all petitioner has asked is that the default judgment be set aside so that for the first time he may defend on the merits. Certainly the undenied facts alleged justify setting aside the default judgment for that purpose. Petitioner is entitled to a fair trial. He has not had it. The Government makes no claim that he has. Fair hearings are in accord with elemental concepts of justice, and the language of the 'other reason' clause of 60(b) is broad enough to authorize the Court to set aside the default judgment and grant petitioner a fair hearing.

Mr. Justice BLACK, Mr., Justice DOUGLAS, Mr. Justice MURPHY, Mr. Justice RUTLEDGE and Mr. Justice BURTON agree that the District Court erred in dismissing the petition to set aside the default judgment, and that the Court of Appeals erred in affirming the District Court judgment. The judgments accordingly are reversed and the cause is remanded to the District Court with instructions to set aside the judgment by default and grant the petitioner a

hearing on the merits raised by the denaturalization complaint.

Reversed and remanded.

It is so ordered.

For modified judgment see 335 U.S. 631, 69 S.Ct. 398.

Mr. Justice BURTON, while agreeing with Mr. Justice REED that a judgment of denaturalization may be entered by default without a further showing than was made in this case, believes that, under the special circumstances here shown on behalf of this petitioner, the judgment by default should be set aside and the petitioner should be granted a hearing on the merits of the issues raised by the denaturalization complaint. He therefore joins in the judgment of the Court as limited to the special facts of this case and without expressing an opinion upon any issues not now before this Court.

Mr. Justice RUTLEDGE, with whom Mr. Justice MURPHY agrees, concurring in the result.

To treat a denaturalization proceeding, whether procedurally or otherwise, as if it were nothing more than a suit for damages for breach of contract or one to recover overtime pay ignores, in my view, every con ideration of justice and of reality concerning the substance of the suit and what is at stake.

To take away a man's citizenship deprives him of a right no less precious than life or liberty, indeed of one which today comprehends those rights and almost all others. [3] To lay upon the citizen the punishment of exile for committing murder, or even treason, is a penalty thus far unknown to our law and at most but doubtfully within Congress' power. U.S.Const., Amend. VIII. Yet by the device or label of a civil suit, carried forward with none of the safeguards of criminal procedure provided by the Bill of Rights, this most comprehensive and basic right of all, so it has been held, can be taken away and in its wake may follow the most cruel penalty of banishment.

No such procedures could strip a naturalborn citizen of his birthright or lay him open to such a penalty. I have stated heretofore the reasons why I think the Constitution does not countenance either that deprivation or the ensuing liability to such a punishment for naturalized citizens. Schneiderman v. United States, 320 U.S. 118, concurring opinion page 165, 63 S.Ct. 1333, 1355, 87 L.Ed. 1796; Knauer v. United States, 328 U.S. 654, dissenting opinion page 675, 66 S.Ct. 1304, 1315, 90 L.Ed. 1500.

Those views of the substantive rights of naturalized citizens have not prevailed here. But the Schneiderman decision and Baumgartner v. United States, 322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed. 1525, required a burden of proof for denaturalization which in effect approximates the burden demanded for conviction in criminal cases, namely, proof

beyond a reasonable doubt of the charges alleged as cause for denaturalization. [4] This was in itself and to that extent recognition that ordinary civil procedures, such as apply in suits upon contracts and to enforce other purely civil liabilities, do not suffice for denaturalization and all its consequences. More than this it was not necessary to decide in the cases cited. No less should be required, in view of the substantial kinship of the proceedings with criminal causes, whatever their technical form or label. Cf. Knauer v. United States, 328 U.S. 654, dissenting opinion pages 675, 678, 66 S.Ct. 1304, 1315, 1316, 90 L.Ed. 1500.

This case, however, presents squarely the issue whether, beyond any question of burden or weight of proof, the ordinary civil procedures can suffice to take away the naturalized citizen's status and lay him open to permanent exile with all the fateful consequences following for himself and his family, often as in this case native-born Americans. The question in its narrower aspect is indeed whether those consequences can be inflicted without any proof whatever.

Under our system petitioner could not be convicted or fined for mail fraud, overceiling sales, or unlawfullly possessing gasoline ration coupons upon a judgment taken by default, much less under the circumstances this record discloses to have been responsible for the default. Yet his basic right to all the protec ions afforded him as a citizen by the Constitution can be stripped from him, so it is now urged, without an iota of proof, without his appearance or presence

in court, without counsel employed or assigned to defend that right, and indeed with no real opportunity on his part to prepare and make such a defense. The case thus goes far beyond the Court's ruling in Knauer v. United States, supra. And, in my opinion, it brings to clearer focus whether, beyond the matter of satisfying the burden of proof required by the Schneiderman and Baumgartner cases, the Knauer case rightly permitted denaturalization through the civil procedures there pursued. [5]

If, in deference to the Court's rulings, we are to continue to have two classes of citizens in this country, one secure in their status and the other subject at every moment to its loss by proceedings not applicable to the other class, cf. Schneiderman v. United States, supra, concurring opinion 320 U.S. at page 167, 63 S.Ct. at page 1356, 87 L.Ed. 1796, Knauer v. United States, supra, dissenting opinion 328 U.S. at page 678, 66 S.Ct. at page 1316, 90 L.Ed. 1500, I cannot assent to the idea that the ordinary rules of procedure in civil causes afford any standard sufficient to safeguard the status given to naturalized citizens. If citizenship is to be defeasible for naturalized citizens, other than by voluntary renunciation or other causes applicable to native-born citizens, [6] the defeasance it seems to me should be surrounded by no lesser protections than those securing all citizens against conviction for crime. Regardless of the name given it, the denaturalization proceeding when it is successful has all the consequences and effects of a penal or criminal conviction except that the ensuing liability to

deportation is a greater penalty than is generally inflicted for crime.

Regarding the proceeding in this light, I do not assent in principle that the judgment of denaturalization can be taken by default or that the rules of civil procedure applicable in ordinary civil causes apply to permit such a result.

* * *

The grounds which I have stated for these conclusions logically would lead to casting my vote to reverse the judgment with instructions to dismiss the proceedings. Since, however, that disposition does not receive the concurrence of a majority, I join with those who, on other grounds, think that the judgment should be reversed and remanded for a new trial, in voting so to dispose of the cause. Accordingly I concur in the Court's judgment. I may add that, upon the assumption that rules of civil procedure may apply in denaturalization proceedings, I am substantially in accord with the views expressed by Mr. Justice BLACK.

Mr. Justice REED, with whom the CHIEF JUSTICE and Mr. Justice JACKSON join, dissenting.

Notes

1. ↑ Amended Rule 60(b) provides: 'On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, of other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, U.S.C. Title 28, § 118, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.'
2. ↑ In 1948 Criminal Code, see 18 U.S.C.A. §§ 1015, 1421 et seq.
3. ↑ Cf. Ng Fung Ho v. White, 259 U.S. 276, 284, 42 S.Ct. 492, 495, 66 L.Ed. 938; Schneiderman v. United States, 320 U.S. 118, 112, and concurring opinion page 165, 63 S.Ct. 1333, 1355, 87 L.Ed. 1796; Knauer v. United States, 328 U.S. 654, dissenting opinion page 675, 66 S.Ct. 1304, 1314, 90 L.Ed. 1500.
4. ↑ See Schneiderman v. United States, 320 U.S. 118, 125, 136, 153, 154, 158, 159, 63 S.Ct. 1333, 1336, 1342, 1349, 1350, 1352, 1353, 87 L.Ed. 1796. At page 158 of 320 U.S., at page 1352 of 63 S.Ct. we said: 'We conclude that the Government has not carried its burden of proving by 'clear, unequivocal, and convincing' evidence which does not leave 'the issue in doubt', that petitioner obtained his citizenship illegally.' The concurring opinion in Knauer v. United States, 328 U.S. 654, 674, 66

S.Ct. 1304, 1315, 60 L.Ed. 1500, went upon the basis of satisfaction 'beyond all reasonable doubt' concerning the proof of the grounds asserted for denaturalization.

5. ↑ In the view of those dissenting, as well as that of the majority in the Kanauer case, the Government had satisfied fully the burden of proof required by the Schneiderman and Baumgartner decisions. See 328 U.S. 654, 675, 66 S.Ct. 1304, 1315, 90 L.Ed. 1500.
6. ↑ See Knauer v. United States, 328 U.S. 654, dissenting opinion pages 675, 676, 66 S.Ct. 1304, 1315, 1316, 90 L.Ed. 1500.

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United States Supreme Court

336 U.S. 942

KLAPPROTT v. UNITED STATES.

Argued: Oct. 20, 1948. --- Decided: Jan 17, 1949

DISSENT: Mr. Justice REED, with whom the CHIEF JUSTICE and Mr. Justice JACKSON join, dissenting.

In May, 1942, the United States began proceedings in the United States District Court for the District of New Jersey, against Klapprott under § 338 of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U.S.C. § 738, 8 U.S.C.A. § 738, [1] to cancel his certificate of naturalization, issued in 1933, on the ground that he had taken a false oath of allegiance to procure the certificate. The complaint alleged that at the time he took the oath petitioner knew that he was not attached to the principles of the Constitution of the United States and did not intend to renounce his allegiance to the German Reich; that petitioner 'is and has been notoriously and openly one of the chief leaders and active members of the German-American Bund' and other organizations sympathetic to German Reich; and that he had made 'numerous statements indicating his allegiance and loyalty to the German Reich and his disregard and disrespect for the principles and institutions of the United States of America.'

Petitioner was personally served with summons on May 15, 1942. Without the introduction of any evidence, judgment by default was entered against him on July 17, 1942, when he failed to answer within the sixty days allowed by § 338, supra, note 1.

In January, 1947, four and one-half years later, Klapprott petitioned the same district court which had entered the judgment of denaturalization for an order to show cause why that judgment should not be vacated. In an affidavit appended to his petition, he stated, after admitting receipt of the summons and complaint, that it was impossible for him to enter a defense and intimated that he was unable to take steps to have the judgment vacated prior to 1947. There is no allegation that he was ignorant of the entry of the judgment for any period of time. See Rules 5(a) and 77(d) of the Federal Rules of Civil Procedure. The reasons contained in the affidavit in support of this general statement can be summarized as follows: Petitioner, as a result of serious illness, was in poor health and 'unable to get around very well' at the time summons was served. Since he had no money with which to retain lawyer, he drafted a letter to the American Civil Liberties Union of New York requesting legal assistance. On July 7, 1942, seven days before time for filing appearance expired, he was arrested by federal authorities on an indictment in the United States District Court for the Southern District of New York, charging him with a conspiracy to violate the Selective Service Act. The letter was taken by these authorities, and, so far as Klapprott knew, never mailed. The court appointed a lawyer to defend petitioner in the New York conspiracy case. Petitioner informed him of the

denaturalization proceeding, to which the lawyer promised to attend, but which he neglected, allowing judgment to be entered by default. Because of the lengthy trial and exceedingly high bail in connection with the conspiracy charge, petitioner was still unable to take steps to have the judgment vacated. He was found guilty of the conspiracy [2] and committed to the Federal Correctional Institution at Milan, Michigan. On January 30, 1944, pursuant to another indictment-the 'Sedition Case' [3] in the United States District Court for the District of Columbia-he was transferred to the District of Columbia. He remained in custody throughout the trial of this case until November 21, 1946, when the indictment was dismissed. Petitioner was then released but was immediately remanded to custody at Ellis Island for the purpose of deportation. From there he began this attempt to have the judg ent of denaturalization vacated.

Petitioner in his affidavit denied the allegations in the government's original complaint and asserted that he had a good and legal defense to the action for cancellation of his certificate of naturalization.

If petitioner is entitled to relief from the default judgment, he must qualify under one or more of the provisions of Rule 60(b) of the Federal Rules of Civil Procedure. [4] I do not think that his petition or the affidavit in support thereof meets the requirements of that Rule for vacating a judgment.

First. The Court assumes, as I think it must, that § 338 of the Nationality Act authorizes default judgments of denaturalization. So much is clear from the provisions in (b) of that section for notice by publication and in (c) for the denaturalization of one who has left the United States to establish a permanent residence elsewhere. The action authorized by the section is civil. [5] The general rule in civil actions is that notice places on the party to whom it is directed the responsibility to appear and defend or face the consequences. Rule 55 of the Federal Rules of Civil Procedure provides for default judgments in civil actions where the party against whom relief is sought fails to plead. The instances enumerated in (b)(2) and (e) of that rule, as those where a default judgment shall not be entered, do not include this case.

The Court suggests under caption *Second*, however, that the presentation of evidence is a prerequisite to the entry of such a judgment, and that a default judgment en ered without evidence is void and therefore subject to vacation without a definite time limit under (4) of Rule 60(b). It points out that Schneiderman v. United States, 320 U.S. 118, 63 S.Ct. 1333, 1335, 87 L.Ed. 1796, held that 'clear and convincing' evidence is necessary to support a judgment of denaturalization. The holding in that case, however, must be viewed in its setting, *i.e.*, a contested case. The case does not support the proposition that any evidence, clear and convincing or otherwise, is required in an uncontested denaturalization proceeding. The general rule in civil actions is that none is necessary. Even though deportation is a most serious disaster to the deportee, it is founded here on uncontested allegations of adequate facts that must be taken as true. Although the committee which formulated the Federal Rules of Civil Procedure twice made a hearing on evidence a requirement for the entry of a default judgment, Rule 55(b)(2) and (e), no such

requirement was expressed for cases of this sort. Except for cases of the sort specified in (b)(2) and (e), and those where the amount of damages is in question, I think the meaning of the Rule is that a default is the equivalent of an admission of allegations which are well pleaded.

The Court seeks support in the fact that other sections of the Nationality Act, 8 U.S.C. §§ 738(e) and 746, 8 U.S.C.A. §§ 738(e), 746, provide for denaturalization when the alien has been convicted of the crime of procuring his certificate of naturalization by knowingly false statements under oath. The protections which safeguard the alien in such a criminal prosecution are sought to be extended to him in civil proceedings under § 738. To me the very existence in the Act of two parallel methods of denaturalization indicate that the protections inherent in the criminal proceeding are not intended to apply to the civil proceeding such as we have here.

Since no expression of Congress can be found, either in the Federal Rules or in the Nationality Act, to the effect that evidence is necessary to validate a civil default judgment of denaturalization, I do not think it is the function of this Court to supply one.

The suggestion of the Court in caption *Fifth* that the government's complaint does not state a cause of action seems unwarranted. Certainly the government is not required to plead all its evidence. Since the complaint alleged fraud and specified in paragraph 6 thereof the circumstances constituting fraud, set out in the first paragraph of this dissent, I think Knauer v. United States, 328 U.S. 654, 66 S.Ct. 1304, 90 L.Ed. 1500, belies the suggestion that the complaint is defective.

Thus I dissent from the suggestion that the judgment against Klapprott can be vacated as void under Rule 60(b)(4).

Second. The Court holds that petitioner is entitled to relief under (6), the 'other reason' clause of Rule 60(b). This follows, it is said, from his allegations that he was held in custody and subjected to several criminal prosecutions by the United States. As I see it, such allegations and nothing to the single ground on which relief could have been based, *i.e.*, 'mistake, inadvertence, surprise, or excusable neglect'. Rule 60(b)(1). I do not mean to say that an arrest and a subsequent period of imprisonment which interfered to the extent of depriving him of the opportunity to get legal assistance or the ability to litigate would not entitle him to relief. In view of the facts set out in petitioner's own affidavit, however, it is difficult to see how imprisonment subjected him to any injustice in this case or how it furnishes him with an additional ground for relief. Thus petitioner does not allege that he requested the return to him or the mailing of his letter to the American Civil Liberties Union. He does not, in fact could not, claim that imprisonment deprived him of the right to counsel. On the contrary he admits that counsel was made available in time to enter an appearance in the d naturalization proceeding, but that counsel negligently failed to do so. Petitioner's ability to litigate during this period of purportedly drastic confinement is illustrated by the fact that in 1945, as stated in his affidavit, he began and continued until its unsuccessful termination a suit to enjoin the Department of Justice from deporting him.

Since the facts alleged amount to a showing of mistake, inadvertence, or excusable neglect only, and since a definite time limit of one year is imposed on relief based on these grounds, the Rule cannot be said to contemplate a remedy without time limit based on the same facts. Otherwise the word 'other' in clause (6) is rendered meaningless. [6]

The Court intimates that petitioner was woefully mistreated by the government. If by this it is meant that he is entitled to relief from judgment based on 'misconduct of an adverse party', Rule 60(b)(3), the answer is that relief on this ground is limited to one year from the judgment. On analysis, however, the suggestion that petitioner's trials have been carried on in a way contrary to concepts of justice as understood in the United States and in a manner incompatible with the pattern of American justice falls flat in view of the simple facts. Klapprott had counsel and open hearings. The courts have cleared him of complicity in a conspiracy to impede the raising of an army and have dismissed a prosecution for seditious conspiracy. To be cleared on these charges can have no effect upon the propriety of his deportation for violation of our naturalization laws.

The limitations imposed by Rule 60(b) are expressions of the policy of finally concluding litigation within a reasonable time. Such termination of lawsuits is essential to the efficient administration of justice. I would not frustrate the policy by allowing litigants to upset judgments of long standing on allegations such as Klapprott's.

Notes

1. ↑ '(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.
2. ↑ Conviction subsequently reversed in Keegan v. United States, 325 U.S. 478, 65 S.Ct. 1203, 89 L.Ed. 1745.
3. ↑ United States v. McWilliams et al., D.C.Cir., 163 F.id 695.
4. ↑ Rule 60(b): 'On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore donominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Section 57 of the Judicial Code, U.S.C., Title 28, § 118, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.'
5. ↑ A subsequent section, 54 Stat. 1163, 8 U.S.C. § 746(a)(1) and (d), 8 U.S.C.A. § 746(a)(1), (d), specifically providing for the criminal penalties of fine and imprisonment for the utterance of a false oath such as this indicates an intention that proceedings under § 338 are not criminal.
6. ↑ Cf. Wallace v. United States, 2 Cir., 142 F.2d 240, 244.

United States Supreme Court

336 U.S. 942

KLAPPROTT v. UNITED STATES.

Argued: Oct. 20, 1948. --- Decided: Jan 17, 1949

DISSENT: Mr. Justice FRANKFURTER, dissenting.

American citizenship other than when acquired by birth rests on a judicial judgment of naturalization. Tutun v. United States, 270 U.S. 568, 46 S.Ct. 425, 70 L.Ed. 738. Congress has explicitly defined the procedures for annulling such a judgment. Johannessen v. United States, 225 U.S. 227, 32 S.Ct. 613, 56 L.Ed. 1066; Luria v. United States, 231 U.S. 9, 34 S.Ct. 10, 58 L.Ed. 101; § 15 of the Act of June 29, 1906, 34 Stat. 596, 601, now formulated in 54 Stat. 1158, 8 U.S.C. § 738, 8 U.S.C.A. § 738. Neither in its terms nor on a fair interpretation of our naturalization laws has Congress indicated that such a judgment-the certificate of naturalization-cannot be annulled by default, that is, without active contest against such annulment, provided that ample opportunity has in fact been afforded to a citizen to contest. This Court is not justified in adding a requirement to the cancellation proceedings that Congress has seen fit to withhold unless some provision of the Constitution so demands. The only possible provision on which an argument can be based that citizenship cannot be canceled by a default judgment is the Due Process Clause of the Fifth Amendment. I reject the suggestion that it offends due process for a judgment of naturalization obtained by fraud to be set aside if the defrauding alien is afforded ample opportunity to contest the Government's claim that he obtained his citizenship through fraud and chooses not to avail himself of that opportunity but allows a judgment of cancellation to go by default.

But in rejecting the contention that citizenship cannot be lost by a default judgment, one does not necessarily embrace the other extreme of assimilating a naturalization judgment to any other civil judgment. This Court has held that because a naturalization judgment involves interests of a different order from those involved in other civil proceedings, the annulment of such a judgment is guided by considerations qualitatively different from those hat govern annulment of ordinarry judgments. Schneiderman v. United States, 320 U.S. 118, 63 S.Ct. 1333, 87 L.Ed. 1796; Baumgartner v. United States, 322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed. 1525. The considerations that set a contested proceeding for cancelling a naturalization judgment apart from other suits to annul a judgment, are equally relevant to a default judgment causing such cancellation. To be sure, the public interest in putting a fair end to litigation and in not allowing people to sleep in their rights has its rightful claim even in proceedings resulting in deprivation of citizenship. But because citizenship has such ramifying significance in the fate of an individual and of those dependent upon him, the public interest to be safeguarded in the administration of justice will not be neglected if courts look more sharply and deal less summarily when asked to set aside a default judgment for cancellation of citizenship than is required of them in setting aside other default judgments.

It is in the light of these general considerations that I would dispose of the present case. I deem it governed by the liberalizing amendment to Rule 60(b) of the Federal Rules of Civil Procedure even though that became effective after the decision below. It is of course not a hard and fast rule that procedural changes are to be prospectively applied to a pending litigation at any stage at which it may be possible to do so without working an injustice. But since citizenship is at stake and this is in effect an appeal in equity to be dealt with as of the time of adjudication, it seems more consonant with equitable considerations to judge the case on the basis of the Rule now in force, even though the lower court did not have the opportunity to apply it.

If the petitioner had paid no attention to the proceeding brought to revoke his citizenship, he would, in my opinion, have no ground for opening up the default judgment simply because during all the years in question he was incarcerated. Men can press their claims from behind prison walls, as is proved by the fact that perhaps a third of the cases for which review is sought in this Court come from penitentiaries. But Klapprott was not indifferent to the proceeding to set aside his citizenship. He took active measures of defense which were aborted through no fault of his own. To be sure he did not follow up these efforts, but what he is saying in the motion made after his criminal cases were ended is in substance that he was so preoccupied with defending himself against the dire charges of sedition (the conviction for which this Court set aside in Keegan v. United States, 325 U.S. 478, 65 S.Ct. 1203, 89 L.Ed. 1745) and the threat of deportation, that the New Jersey cancellation proceeding naturally dropped from his mind after he had taken what he thought appropriate steps for his protection. The Government in effect demurred to this contention and the District Court's action, affirmed by the Court of Appeals, practically ruled as a matter of law that the claim of Alapprott, even if true, affords no relief. It is to me significant that one of the two affirming judges of the Court of Appeals decided the case largely on a close reading of the old Rule 60(b) and that the other rested his case on laches, while this Court fails to draw on laches for the support of its conclusion.

Rule 60(b) now provides five grounds for relief from default judgments and a sixth catch-all ground, 'any other reason justifying relief from the operation of the judgment'. [1] The only one of the first five reasons to which Klapprott's conduct, as explicitly narrated, may plausibly be assigned is that of 'excusable neglect,' relief from which must be obtained within a year after a default judgment. But I think that if the inferences fairly to be drawn from the circumstances narrated by Klapprott were found to be true, they would take his case outside of the characterization of 'neglect,' because 'neglect' in the context of its sub ect matter carries the idea of negligence and not merely of non-action, and would constitute a different reason 'justifying relief from the operation of the judgment.' When a claim for citizenship is at stake, we ought to read a complaint with a liberality that is the antithesis of Baron Parke's 'almost superstitious reverence for the dark technicalities of special pleading.' See 15 Dict. Nat. Giog. 226. Therefore, what fairly emanates from such a complaint should be treated as though formally alleged. And so I would not deny Klapprott an opportunity, even at this late stage, to establish as a psychological fact

what his allegations imply, namely that the harassing criminal proceedings against him had so preoccupied his mind that he was not guilty of negligence in failing to do more than he initially did in seeking to defend the denaturalization proceeding. But I would not regard such a psychological issue established as a fact merely because the Government in effect demurred to his complaint. Since the nature of the ultimate issue-forfeiture of citizenship-is not to be governed by the ordinary rules of default judgments, neither should the claim of a state of mind be taken as proved simply because the Government, feeling itself justified in resting on a purely legal defense, did not deny the existence of that state of mind.

To rule out the opportunity to establish the psychological implications of the complaint would be to make its denial a rule of law. It would not take much of the trial court's time to allow Klapprott to establish them if he can. The time would be well spent even if he should fail to do so; it would be more consonant with the safeguards which this Court has properly thrown around the withdrawal of citizenship than is the summary disposition that was made. But I would require Klapprott to satisfy the trial judge that what he impliedly alleges is true, and it is here that I part company with the majority.

April 4, 1949.

The motion of the respondent to modify the judgment of this Court in this case is granted. The judgment announced January 17, 1949, is amended to read: 'The judgment of the Court of appeals is reversed and the cause is remanded to the District Court with directions to receive evidence on the truth or falsity of the allegations contained in petitioner's petition to vacate the default judgment entered in the denaturalization proceedings.'

Mr. Justice BLACK, Mr. Justice DOUGLAS, Mr. Justice MURPHY, and Mr. Justice RUTLEDGE dissent from the modification of the order.

Notes

1. ↑ Rule 60. Relief From Judgment or Order.

   '(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.'

United States v. Klapprott, 9 F.R.D. 282 (D.N.J. 1949)

Opinion

Action by the United States of America against August Klapprott seeking revocation of a citizenship certificate wherein a default judgment was ordered entered, and defendant thereafter petitioned to have the judgment vacated.

Defendant's petition overruled.

Alfred E. Modarelli and Edward V. Ryan, Newark, New Jersey, for plaintiff.

Frederic M. P. Pearse, Newark, New Jersey, Morton Singer, New York City, P. Bateman Ennis, Washington, D. C., for defendant.

LEDERLE, District Judge (sitting by Special Designation).

Findings of Fact

1. This action was instituted May 12, 1942, seeking revocation of the citizenship certificate issued to defendant, August Klapprott, on November 16, 1933, claiming that he had taken a false oath of allegiance to procure the certificate. Defendant was served with copy of the complaint and summons on May 15, 1942. He has never filed an answer, either personally or by counsel. The records of the Clerk of this court show that on July 17, 1942, the testimony of F.B.I. Agents William Rulon Paxman and H. Bruce Baumeister was heard by the court and default judgment ordered entered, cancelling defendant's certificate or naturalization, without findings of fact and conclusions of law. On January 7, 1947, defendant, through counsel, filed a petition, supported by defendant's affidavit, asking that the default judgment be vacated and defendant given an opportunity to enter a defense to the cause on the merits. This petition was overruled by order entered February 17, 1947, based upon an opinion of District Judge William F. Smith, filed February 7, 1947, D.C., 6 F.R.D. 450. The Third Circuit Court of Appeals affirmed in Klapprott v. United States, 166 F.2d 273. This decision was ultimately reversed by the Supreme Court in an opinion dated January 17, 1949. See: Klapprott v. United States, 335 U.S. 601, 69 S.Ct. 384. Upon motion of the Government, an amended mandate was entered April 4, 1949, by the Supreme Court, ordering: ‘ The judgment of the Court of Appeals is reversed and the cause is remanded to the District Court with directions to receive evidence on the truth or falsity of the allegations contained in petitioner's petition to vacate the default judgment entered in the denaturalization proceedings.’ In pursuance of this amended mandate, pre-trial hearings were held on June 13 and June 14, 1949, resulting in a stipulation of some of the facts, incorporated herein as findings 2 to 24, inclusive. Each party also submitted proposed findings of fact and conclusions of law. Trial was held June 15 and June 16, 1949, at which the court heard the testimony of some 22 witnesses.

2. Defendant was born at Brochthausen, Germany, on September 4, 1906.

3. Defendant arrived in the United States of America on September 19, 1927.

4. Defendant filed a declaration of intention to become a citizen on January 30, 1928 in the Bergen County Common Pleas Court and filed his petition for naturlization on July 27, 1933 in said Court; defendant was naturalized on November 16, 1933 and received Certificate of Naturalization No. 3707549 in Bergen County Common Pleas Court, Hackensack, New Jersey.

5. Defendant entered Christ Hospital, Jersey City, New Jersey on March 8, 1942 and was discharged therefrom on March 26, 1942.

6. Defendant was served personally with a summons and complaint in the above action for denaturalization at Camp Nordland, Andover, New Jersey, on May 15, 1942.

7. Defendant had 60 days in which to appear and answer after service of the summons and complaint herein. Defendant's time to answer expired on July 14, 1942.

8. Indictments against the defendant and others were filed in the United States District Court for the Southern District of New York on July 7, 1942, charging defendant, along with others, with (1) violation of the Selective Training & Service Act of 1940, 50 U.S.C.A.Appendix, § 301 et seq.; and (2) violation of the Alien Registration Act of 1940, 8 U.S.C.A. §§ 137, 155, 156a, 451 et seq.

9. On July 7, 1942, a warrant for removal of defendant to the United States District Court for the Southern District of New York was issued and the defendant surrendered and was taken into custody by Special Agents of the F.B.I. on the removal warrant at Camp Nordland, Andover, New Jersey. Defendant was questioned for four hours, and was taken before United States Commissioner Holland at the Federal Building, Newark, New Jersey, where he was arraigned, and waived hearing on removal. Bail was fixed at $10,000, on default of which he was retained in custody and delivered by the United States Marshal for the District of New Jersey to the Hudson County Jail, Jersey City, New Jersey. He was detained there for two days until July 9, 1942, at which time, Deputy Marshals for the District of New Jersey, in execution of the removal warrant, transported and delivered defendant to the United States Marshal for the Southern District of New York, at New York City.

10. On July 9, 1942, at the United States District Court for the Southern District of New York, the defendant entered pleas of ‘ not guilty’ to the indictments filed against him in that district and his bail was fixed at $25,000, in default of which he was delivered to the custody of the United States officials at the Federal House of Detention, New York City.

11. Defendant was represented in the criminal proceedings in the Southern District of New York by court-appointed counsel, to wit: Edward W. McDonald.

12. That from July 9, 1942 to and including the date of entry of the default judgment herein, the defendant was confined at the Federal House of Detention in New York City.

13. The default judgment was entered in this action on July 17, 1942 and thereafter the order was amended in formal particulars on November 2, 1942.

14. The trial of the criminal charges against the defendant in the Southern District of New York began September 17, 1942 and on October 19, 1942, the jury brought in a

verdict of ‘ guilty’ . Klapprott was sentenced to 5 years on October 21, 1942 on the charge of violating the Selective Service Act. Neither the defendant, nor any other of his co-defendants in the criminal proceedings referred to testified or presented proof in his or their behalf.

15. Klapprott was in daily attendance at his trial in New York and was represented by said court-appointed counsel, Edward W. McDonald, Esquire.

16. On October 23, 1942, a notice of appeal was filed in said criminal action to the United States Court of Appeals for the Second Circuit, which Court affirmed the conviction of the defendant on February 29, 1944, United States v. Keegan, 141 F.2d 248. On the appeal, defendant was represented by John F. X. Finn, Esquire, who was appointed by the court to handle the appeal.

17. On June 11, 1945, the Supreme Court of the United States reversed the affirmance by the Circuit Court of Appeals for the Second Circuit, referred to above, 325 U.S. 478, 65 S.Ct. 1203, 89 L.Ed. 1745.

18. From October 21, 1942 to on or about June 12, 1943, defendant was detained at the House of Detention, New York City; that on or about the 28th day of May, 1943, defendant signed an election to enter upon service of his sentence and it was filed with the United States District Court for the Southern District of New York on June 1, 1943.

19. The defendant entered upon the service of his sentence imposed by the United States District Court for the Southern District of New York at Milan, Michigan on or about June 12, 1943 and remained there until on or about January 24, 1944, at which time he was transferred to the Washington Asylum & Jail, Washington, D. C. on Writ of Habeas Corpus to defend a criminal indictment returned against him and others in a case known as the Sedition Case, (United States v. McWilliams, et als), D.C., 54 F.Supp. 791.

20. Thereafter, the defendant was in custody at the Washington Asylum & Jail, Washington, D. C. from January 24, 1944 to and including December 6, 1946 when he was transferred to Ellis Island, New York.

21. Counsel was assigned to defend defendant and did defend him in the ‘ Sedition Case’ ; the trial ended on November 29, 1944, at which time a mis-trial was declared due to the death of the presiding judge. The trial was not resumed and on motion filed by the defendants, the case was dismissed by the court on November 22, 1946 and the order of dismissal was entered December 2, 1946.

22. Defendant was one of a group of 159 aliens who filed an action to enjoin the Attorney General from deporting them. Citizens Protective League v. Clark, 81 U.S.App.D.C. 116, 155 F.2d 290, certiorari denied December 9, 1946, 329 U.S. 787, 67 S.Ct. 354, 91 L.Ed. 674. This action was instituted on behalf of defendant while he was confined at the Washington Asylum & Jail.

23. On January 11, 1945, a Writ of Habeas Corpus was issued out of the District Court, District of Columbia at defendant's request through an attorney, also during his confinement at Washington, D. C.

24. The petition in the proceeding at bar was signed by the defendant on December 12, 1946, was filed with the United States District Court for the District of New Jersey on

January 6, 1947, and an order to show cause was issued. A hearing was held on January 28, 1947. The District Court denied the application on jurisdictional grounds and the case was taken on appeal to the United States Circuit Court for the Third Circuit which affirmed the District Court. Thereafter, the case was taken to the United States Supreme Court and the judgment below was reversed on January 17, 1949, 335 U.S. 601, 69 S.Ct. 384.

25. Findings 26 to 32, inclusive, are based on a specific consideration of various allegations of defendant's petition to vacate.

26. During the Spring of 1942, defendant was seriously ill, suffering from stomach ulcers, and was confined to Christ Hospital, Jersey City, from March 8 to March 26, 1942, which illness endangered his life and required two blood transfusions. Upon his release from the hospital, petitioner was in very poor health, as a result of which he was advised to live in a place where he could receive proper rest and relaxation. Since petitioner was in very poor financial circumstances and in view of his affiliations with the German-American Bund, which was at that time the owner of a recreation camp at Andover, New Jersey, known as Camp Nordland, petitioner made arrangements to live at Camp Nordland until such time as his health improved.

27. While living at Camp Nordland and on the 15th of May, 1942, petitioner was served with summons and complaint in the above-mentioned proceedings. The allegations of paragraph 4 of the petition that, ‘ In view of his poor physical condition, petitioner was unable to get around very well and since he was also in very poor financial condition petitioner had no money with which to retain a lawyer to represent him,’ are false. Plaintiff's health was steadily improving. He had been employed in New York for a considerable length of time before his illness. He is more than ordinarily intelligent. He was an editorial writer on a newspaper. He was a leader and lecturer in various organizations. He owned a station wagon, which he drove 40 miles to New York City on June 9, 1942, stayed overnight in New York, took the train the following day to Hartford, Connecticut, where he testified before a Grand Jury in response to a United States subpoena served on him. The United States Marshal advanced him $10.00 to pay the expense of this trip. He returned to New York, spending another night there, and then drove his station wagon back to Camp Nordland the next day. Prior to July 7, 1942, he sold the station wagon for $200.00.

28. The petition alleges in paragraph 4, ‘ In order to obtain some legal assistance, petitioner wrote out and addressed a letter to the American Civil Liberties Union of New York, in which he explained that he had no money with which to retain a lawyer and requested that they arrange for some legal assistance for him. This letter was in petitioner's possession on the day of his arrest and was taken away from him by the Federal Bureau of Investigation, and so far as petitioner knows, it was never mailed and is undoubtedly in the hands of the United States Department of Justice. Petitioner had also drawn up a draft of an answer to the complaint and was working on it at the time of his arrest, but because of the fact that he was taken into custody, petitioner was unable to complete it and it was left at petitioner's home when he was taken away.’ These allegations, upon conflicting testimony and considering all the surrounding circumstances, I find to be false. At the time defendant surrendered to the two F. B. I. Agents on July 7, 1942, at Camp Nordland, for removal to the New York District Court,

defendant voluntarily signed a document authorizing these agents to search his premises and take therefrom any letters or papers they desired. Such a search was made in the presence of defendant, and three letters were seized, namely, envelopes addressed to defendant postmarked, respectively, Chicago, January 28, 1942; Milwaukee, January 28, 1942; and Milwaukee, January 15, 1942. Each of these envelopes contained a letter written in the German language. No other letters, papers, or documents were seized. For many years after judgment herein, defendant made no mention of any letter to the American Civil Liberties Union or partial answer to the complaint, and these F. B. I. Agents neither saw nor seized any such documents at the time of this search and seizure on July 7, 1942. The defendant's story of the existence of these documents and their disposition is not worthy of belief.

29. Defendant was arraigned in the United States District Court for the Southern District of New York on July 9, 1942, in the so-called ‘ Selective Service Case,’ at which time he pleaded not guilty. Edward W. McDonald, a New York Attorney, was appointed by the court on July 28, 1942, to defend this defendant and three others in that case. This attorney had neither known nor spoken to defendant prior to such appointment. He represented defendant throughout the four or five weeks trial, consulted with him for the month between appointment and trial at the Federal House of Detention where defendant was kept, consulted with him at the trial, during recesses, and, outside of court hours, at the Federal House of Detention. Mr. McDonald has since become an Assistant United States Attorney in New York, and, more latterly, a United States Commissioner there. He has never been admitted to practice in any New Jersey Court. Some time after July 28, 1942, during the course of a consultation Mr. McDonald had relative to that case with defendant Klapprott and another defendant whom he was assigned to represent, defendant Klapprott mentioned his denaturalization case and stated that his time to answer had expired. Mr. McDonald told the defendant, in effect, that he could not undertake any responsibility in connection with the denaturalization case. 3 Cir., 166 F.2d 273. At the time of Mr. McDonald's first contact with defendant, the default judgment of denaturalization had been ordered eleven days previously in New Jersey. Accordingly, I find as false petitioner's allegation in paragraph 5 of his petition that, ‘ This attorney promised to look into the matter, but petitioner later found out that instead of doing so, he neglected the matter entirely and permitted the judgment to be entered against petitioner by default, after having, by his promises, lulled petitioner into a sense of security with respect to this matter.’

30. Defendant concedes that by the time he was taken to the Tombs Prison on September 10, 1942, for a week before the New York trial commenced, he knew that his citizenship certificate had been cancelled.

31. I find as false the conclusion in paragraph 6 of the petition, that up to the end of the Selective Service trial in New York petitioner ‘ was still unable to take any steps in connection with the denaturalization proceedings.’

32. On several different occasions between the time of service of the summons and complaint herein on May 15, 1942, and the time of defendant's arraignment on the New York removal warrant on July 7, 1942, defendant stated that he did not intend to defend the denaturalization case. Of particular significance was one of such occasions, June 27, 1942, when the two F. B. I. Agents visited defendant at Camp Nordland for the express

purpose of ascertaining whether or not he intended to contest the denaturalization case and also of discussing with him the matter of his loyalty or disloyalty to the United States. One of these agents, Baumeister, testified at the time of hearing for entry of default judgment herein. Taking into consideration all of the circumstances as shown by the evidence adduced at this present hearing, I find defendant's allegation, in paragraph 9 of his petition, that he did not intend to permit this matter to go by default, is false. His intention to contest this denaturalization case was first formulated years after the judgment was entered.

33. For purposes of this record it was conceded that, if questioned on the subject, defendant would testify contrary to the allegations of the complaint relative to his having fraudulently and illegally obtained his citizenship certificate and that the Government is prepared to offer proof supporting such allegations of the complaint.

34. The physical condition of the defendant between May 15, 1942 and the date upon which default judgment was entered against him, to wit: July 17, 1942, did not prevent him from entering a defense to the action and was not of a nature or degree such as would excuse him from so defending.

35. Between May 15, 1942, the date upon which the defendant was served with process herein, and July 7, 1942, he did not answer or appear in the above action and made no effort to obtain counsel to appear or act for him in his behalf.

36. Between July 7, 1942 and the date default judgment was entered on July 17, 1942, the defendant was not prevented by any person or officer of the Federal Government from applying to any court, attorney, or other person for assistance in defending himself in this action.

37. Throughout the confinement of the defendant, from July 7, 1942 until and including the date upon which his petition for relief was filed herein, during which time defendant was confined at the Federal House of Detention, New York City; the Federal Correctional Institution, Milan, Michigan; the Washington Asylum & Jail, Washington, D. C., and Ellis Island, New York, the defendant was at all times permitted to communicate with persons and attorneys and to receive visitors, including the attorneys for any legitimate purpose, concerning the defense or protection or the institution of actions to protect his legal rights.

38. During such period of time, the defendant conferred with several different attorneys in New York City and at Washington, D. C. in connection with the cases in which they represented him, respectively, including the criminal case against him in the Southern District of New York; the appeal from his conviction in that action; the ‘ Sedition Case’ in the District of Columbia; the Citizens' Protective League case in the District of Columbia, which was an action to enjoin the Attorney General from deporting the defendant and a large number of other aliens, and a habeas corpus proceeding instituted by an attorney on behalf of the defendant in the District of Columbia. In the course of all such proceedings, the defendant conferred with the attorneys who represented him in the various actions mentioned above and on the appeals in such actions, freely and without restriction.

39. The defendant did not at any time up to the filing of the petition which is now under consideration, take any steps or obtain the assistance of any attorney in this action.

40. During the periods when the defendant was confined in the Federal House of Detention, New York City; the Federal Correctional Institution, Milan, Michigan; the Washington Asylum and Jail, Washington, D. C., and Ellis Island, New York, the defendant, who was a bricklayer and mason by trade, performed the functions of such trade at the institutions in which he was confined in the course of which he performed manual labor.

41. Defendant was not prevented from taking steps to apply for relief from the default judgment filed herein by any of the officers or agents of the United States at any of the institutions where he was confined and he was not so prevented by any rule or restriction applicable at any of such institutions.

42. The defendant took an active part and attended a criminal trial against him in the Southern District of New York for a period of several weeks; participated in the presentation and filing of his appeal from his criminal conviction in the Southern District of New York; while confined at Washington, D. C. with the ‘ Sedition Case’, attended court on many days during the years 1944, 1945, and 1946; and in the habeas corpus action brought in the District of Columbia, without being in any way restricted by any agent or officer of the United States in connection with such actions, except insofar as it was necessary for him to be confined at the institutions where he was then held following the conclusion of the court proceedings each day.

43. During defendant's one week confinement in Tombs Prison, New York City, before trial of the New York Selective Service case, he was informed by other inmates that the cell he occupied had just been vacated by a person who had just been removed to the ‘ death house’ at Sing Sing Prison, Ossining, New York, and that such cell was always used for detaining persons charged with murder.

44. During the period of the Selective Service trial in New York, the authorities at the Federal House of Detention, New York City, kept defendant and the other ‘ Selective Service Case’ prisoners segregated for a time because of friction between them and other inmates, and the authorities censored all newspapers and deleted therefrom articles concerning such trial.

45. Defendant gave prison authorities a history of his stomach disorder at the time he was delivered to the Federal House of Detention, New York, and a bland diet was prescribed for defendant, which was continued for a short period of time.

46. After the conviction in the Selective Service case, defendant's court-appointed counsel, McDonald, came to see defendant and informed defendant that he was through with the case. Thereafter, John F. X. Finn was appointed counsel, and handled the appeals mentioned in findings 15 and 16.

47. Upon defendant signifying his election to enter upon service of the sentence in the Selective Service case, he was removed from the Federal House of Detention, New York, to the Federal Correctional Institution, Milan, Michigan, by automobile, handcuffed to another prisoner. Upon arrival at Milan, defendant was placed in a cell which other inmates informed him had been occupied for a time by a prisoner who had

been under death sentence for treason. During defendant's confinement at Milan, he and other so-called ‘ political prisoners' were segregated in a separate cell block on the third floor, which prison officials described as the most desirable location to be confined, particularly because this cell block is the least guarded and has its own recreational facilities on the roof of the prison.

48. During defendant's removal from Milan to Washington, D. C., on January 24, 1944, to answer the charges in the ‘ Sedition Case’, the trip was by bus and train, and defendant was kept in leg irons. During defendant's confinement in the Washington Asylum & Jail, Washington, D. C., he was segregated with other ‘ Sedition Case’ defendants.

49. The various institutions in which defendant was confined compare favorably with other like institutions in which prisoners are customarily confined in this country. His mail and other reading matter was censored by the Department of Justice, in the same manner as mail of other inmates. This procedure required 5 to 15 days longer for the receipt and delivery of defendant's mail than is required for ordinary mail deliveries outside an institution.

50. The ‘ Sedition Case’ at Washington, D. C., consumed approximately eight months, during which period of time defendant was represented by court-appointed counsel.

51. Outside of court hours, during the period from January 24, 1944 until December 2, 1946, the defendant was confined in the Washington Asylum & Jail for the District of Columbia.

52. During the course of the ‘ Sedition Trial’, defendant rode back and forth from the jail to the court in an enclosed van. Over 1100 exhibits had been offered by the Government in evidence up to the time of the mistrial, at which time the Government was still presenting its case. There were over 18,000 pages of testimony up to the time of mistrial.

53. A great many of the exhibits were in German, and were translated on the witness stand by Government translators and, as a result, the defendant and others with a knowledge of German occupied themselves with the checking of translations.

54. On December 6, 1946, defendant was removed from the Washington Asylum & Jail for the District of Columbia to Ellis Island, New York, at which time all criminal charges of any nature against the defendant had been reversed or dismissed. Defendant was removed to Ellis Island for the purpose of deportation, as a result of the decree of denaturalization heretofore obtained in the United States District Court for the District of New Jersey.

55. The defendant, Klapprott, knowingly, voluntarily, and intentionally failed to defend the above-entitled action at all times up to the date of the default judgment, and for many years thereafter.

Conclusions of Law

1. Where, as here, it appears that the essential allegations of a petition filed four and one-half years after entry of a default judgment of denaturalization, seeking to have such judgment vacated, such allegations being, briefly, that the defendant had intended to defend the action and had taken some steps to accomplish this purpose but was prevented from doing so by actions of Government agents, by illness and lack of funds, are false, and that defendant knowingly, voluntarily, and intentionally permitted the entry of default judgment, the defendant has not shown good cause or reason to have the default judgment vacated under any provisions of Rule 60(b), as amended, Federal Rules of Civil Procedure, 28 U.S.C.A., or under the ruling of Klapprott v. United States, 325 U.S. 478, 65 S.Ct. 1203, 89 L.Ed. 1745.

2. Accordingly, order overruling the petition to vacate default judgment herein is being entered simultaneously herewith.

Order Overruling Petition to Vacate Default Judgment

In accordance with the foregoing findings of fact and conclusions of law, It Is Hereby Ordered that the petition filed herein by defendant on January 6, 1947, seeking to have the default judgment herein vacated, is hereby overruled.

Klapprott v. United States, 183 F.2d 474 (3d Cir. 1950)

US Court of Appeals for the Third Circuit - 183 F.2d 474 (3d Cir. 1950)

Argued March 21, 1950
Decided July 20, 1950

P. Bateman Ennis, Washington, D. C. (Frederic M. P. Pearse, Newark, N. J., Morton Singer, New York City, on the brief) for appellant.

Edward V. Ryan, Asst. U. S. Atty., Newark, N. J. (Alfred E. Modarelli, U. S. Atty., Newark, N. J., on the brief) for appellee.

Before McLAUGHLIN and KALODNER, Circuit Judges, and FEE, District Judge

McLAUGHLIN, Circuit Judge.

This appeal is from an order of the District Court which overruled appellant's petition to vacate a default judgment entered against him in a denaturalization proceeding on July 17, 1942. The petition was originally filed in the District Court, January 7, 1947.[1] On February 17, 1947, it was dismissed on the ground that the Court had lost jurisdiction of the matter through lapse of time. On that occasion the stated position of the Government was that the material allegations of the petition were denied and that in the event of a hearing on the merits of the petition, those allegations would be contested. We affirmed the dismissal of the petition.[2] The Supreme Court reversed[3] and on April 4, 1949, in its amended judgment in the case, said: "The judgment of the Court of Appeals is reversed and the cause

is remanded to the District Court with directions to receive evidence on the truth or falsity of the allegations contained in petitioner's petition to vacate the default judgment entered in the denaturalization proceedings." [4]

The District Court had a hearing in accordance with the above mandate on June 15 and 16, 1949, and some twenty-two witnesses testified. At that hearing it was conceded by appellant's attorney that the burden of proof, so far as having the default set aside, was on the defendant. From the stipulated facts and from the testimony, the Trial Court made written findings of fact and conclusions of law. 9 F.R.D. 282. Appellant urges that four of the findings of fact are in error (one of those so designated is really part of the first conclusion of law), that the Court erred in refusing to find that appellant was "not guilty of negligence in failing to do more than he did initially in seeking to defend the denaturalization proceedings" and that the Court erred in the admission of certain testimony.

It was admitted, and properly so, by the attorney for the appellant at the oral argument on this appeal, that the rule governing both the findings of fact and refusals of requests to find, is whether there was substantial evidence supporting the action of the District Judge. [5]

Five points of appellant's six points are interrelated. They call for a detailed examination of the evidence and will be discussed together.

It is asserted that:

(1) the Court below erred in finding as a fact that appellant knowingly, voluntarily and intentionally permitted entry of the default judgment cancelling his certificate of citizenship,

(2) appellant's statement in his petition that "in view of his poor physical condition, petitioner was unable to get around very well and since he was also in very poor financial condition petitioner had no money with which to retain a lawyer to represent him" was not false as found by the Court,

(3) appellant's statements that he had written a letter to the American Civil Liberties Union asking for legal assistance, which letter, prior to mailing, was taken from him by agents of the Federal Bureau of Investigation, and that at the time he claims he was arrested he was working on a draft of answer to the complaint in this cause which he was unable to complete because of his alleged arrest and which was left at his home when he was taken away, were not false as found by the Court,

(4) appellant's allegation in paragraph 5 of his petition, that his court appointed attorney in the New York criminal case, after having promised to look into the naturalization matter, instead of doing so, "neglected the matter entirely and permitted a judgment to be entered against petitioner by default, after having, by his promises, lulled petitioner into a sense of security with respect to this matter" was not false as found by the Court,

(5) the Court erred in not finding as a fact that the harassing criminal trial to which appellant had been subjected, and the long period of confinement in jail, had so proccupied appellant's mind and undermined him physically and mentally that he was not guilty of negligence in failing to do more than he did initially in seeking to defend the naturalization proceeding.

Appellant testified that he was served with the complaint in this denaturalization action in the middle of May, 1942, and that he read it. The return on the summons shows that it was served personally on appellant May 15, 1942. Under the statute, appellant had sixty days from the date of the service upon him in which to appear. He states in his petition that he became a naturalized citizen on November 16, 1933. According to his own testimony, for about two years prior to the end of 1941 he had been writing editorials at the rate of at least one a week for a weekly newspaper. He was vice president of the company which published the newspaper. In addition, he traveled about, lecturing on German-American subjects. He was eastern departmental leader of the German-American Bund from 1939 to its dissolution when, as he says, "the war broke out". He had been a mason, bricklayer and tile setter. Even in the above brief outline ample evidence is indicated to justify the conclusion of the District Judge that appellant "* * * is more than ordinarily intelligent". Appellant testified that he knew he had sixty days to answer the complaint and that his time expired July 14, 1942. He said he was always thinking of the expiration date.

During the early spring of 1942, as the evidence showed, and as the Trial Court found, appellant was seriously ill from stomach ulcers and had been confined to a hospital from March 8th to March 26th of that year. After his release from the hospital, also as the Court found, appellant's health steadily improved. On April 20th, less than a month after he left the hospital, he attended a party at Backofen Tavern, Union City, New Jersey. That party, as appellant says, was given "to welcome me back to my health." Its date, according to appellant, coincided with Hitler's birthday. On June 9, 1942, he drove his station wagon from Camp Nordland, New Jersey, a distance of forty miles, to New York City, where he stayed overnight. He went to Hartford, Connecticut, by train the following day and there testified before a Federal Grand Jury. On returning to New York he stayed overnight in that city and drove back to Camp Nordland in his station wagon the next day. F.B.I. agents who

saw Klapprott on June 5, June 27 and July 7, indicated Klapprott was at least well enough to get around and Dr. Matthews, who examined him on July 7, said, "He is not acutely ill." A few days later he was examined by a physician in New York who testified that Klapprott "appeared to be in good health at that time."

Klapprott claimed that after he was served in the denaturalization proceeding and prior to the expiration of his time to answer, he wrote a letter to the American Civil Liberties Union requesting legal assistance. Speaking of that time he said, "I wasn't quite well yet, * * *." He also said that he had drawn up a partial draft of an answer to the complaint. He testified that the letter was taken from his coat on July 7, 1942, at Nordland, New Jersey, the day he says he was arrested on selective service criminal charges originating in the Southern District of New York. He states that the draft of his answer was left at his home when he was taken away. According to the F.B.I. agents (one of them no longer associated with the F.B.I.) who were with Klapprott at Nordland on July 7, 1942, Klapprott was not arrested at that time but came voluntarily with them to Newark. The agent who searched Klapprott's person and premises (with the latter's permission, according to the agent) testified that he took no letter addressed to the Civil Liberties Union, as Klapprott claimed, or ever heard anything about such a letter. Appellant said that he never wrote another letter to the Civil Liberties Union. He admitted that he waived removal to New York. He said that while he was in New York at the House of Detention that there were no restrictions upon him regarding seeing lawyers. He was assigned a lawyer in the New York case. He attended the New York trial every day and thereafter remained in the Federal House of Detention, New York City, until June 19, 1943. He stayed in New York in order to take care of his appeal from the judgment of conviction against him in the New York case. In June of 1943 he asked to start serving his sentence and was transferred to Milan, Michigan. He testified that at Milan he was permitted to send and receive letters. In 1944 he was transferred to Washington, D. C., where he was a defendant in the so-called sedition trial in that city. He was in confinement in Washington during the years 1944, 1945 and 1946. During that time he received numerous visits from various lawyers. He never asked the Court for assistance. He never asked the United States Attorney or anyone else for assistance. He was later transferred to Ellis Island. While there he was permitted to return to his home to obtain papers which he said were needed.

The medical records for appellant while he was confined in New York City show that he was not in the prison hospital or seriously ill. The Milan records show that he was not sick during his stay there and that he was working as a tile setter at least part of that period. During his almost three years in Washington he was in the infirmary a total of twenty-three days. At Ellis Island he was examined and passed by the resident physician and worked

there as a mason. While there, he was allowed to write as many letters to lawyers and to his wife as he wished. He was paroled on April 30, 1947.

There was testimony by Agent Watson that on June 5, 1942, at Camp Nordland, appellant had told him that because of his financial condition he would not be able to defend the denaturalization proceeding. As to this, appellant said, "I don't know whether I said that that way." There was also testimony by Agent Weisiger that appellant had told him and Agent Baumeister on June 27, 1942, at Nordland, "that he wasn't going to defend the naturalization proceeding." Weisiger said that he told appellant that there was "* * * no reason why he shouldn't defend the case; that he would receive a fair trial if he did defend the case." Weisiger stated that appellant gave as his reason for not defending, that he thought no one would believe that he was not loyal to Germany instead of the United States because he had written "these pro German articles * * *." Agent Kleinkauf was the person who advised appellant on July 7, 1942, of his indictment in the Southern District of New York for conspiracy to violate the Selective Service Act of 1940 and the Alien Registration Act. He stated that appellant told him "that he had no intention of defending himself in this denaturalization proceeding, * * *."

The evidence is convincing that Klapprott, after he had been served in the denaturalization proceeding and prior to July 14, 1942, when default judgment was taken against him therein, thoroughly understood the nature of the proceeding against him and that he voluntarily abstained from appearing in the matter during the sixty day statutory period allowed for appearance after service of the summons and complaint upon him. It is clear that thereafter and until on or about the time the present petition was filed on January 7, 1947, appellant did nothing affirmative in connection with attempting to reopen the default judgment entered on July 14, 1942, despite the fact that throughout those years he was in no way prevented from taking any proper steps in that connection if he had so desired. The finding of the Court objected to under the first point has substantial foundation in the record and must be sustained.

Ample evidence also supports the lower Court in holding to be false the contention that Klapprott was unable to get around very well because of his physical condition. He had been seriously ill back in March of 1942, but by the middle of that April he was well enough to attend a party welcoming him back to health. Both lay and medical testimony make it abundantly clear that during the period he, at the very least, was not acutely ill. In the first part of June, 1942, when he still had well over a month to enter an appearance in the denaturalization proceeding, he was well enough to drive back and forth between Nordland and New York, a distance of 40 miles, and to travel to and from Hartford, Connecticut, by

train. This point embraces the assertion that Klapprott had no money with which to hire a lawyer. The proof was that in the last week of June, 1942, he did have two hundred dollars cash obtained from the sale of his automobile. There was no proof that he ever tried to engage an attorney. He never requested aid from the Court in this connection. Of necessity, this question of Klapprott obtaining legal assistance leads to his third point — his suggestion that the Court should have found that he had written a letter to the Civil Liberties Union which was taken from him by F.B.I. agents. The Trial Judge was justified, from the evidence, in finding as he did that Klapprott had never written such letter. But, in addition, Klapprott's testimony on which the request was based shows him to have been quite familiar with at least one method of obtaining legal representation. Despite the fact that he was not prevented from so doing and never claims that he was, Klapprott thereafter made no attempt to get in touch with the Civil Liberties Union or any other person or group asking for legal assistance.

There is nothing in the record to validate the fourth request which was denied as false. Regarding this point, appellant's brief states as follows: "At the outset we concede that Klapprott's belief that his Court-appointed counsel in the New York case permitted a judgment to be entered against appellant in the denaturalization proceeding was an incorrect statement." It is admitted in the same part of appellant's brief that the Court appointed attorney for Klapprott in the New York case never spoke with Klapprott prior to his appointment on July 28, 1942. The default judgment in the instant suit was entered July 27, 1942. While it is not conceded that Klapprott, at the time he spoke to the attorney, knew that a default judgment had been entered against him, he did know the expiration date for his appearance, and he did know that he had not appeared.

From the evidence, the District Judge was clearly correct in refusing to find that Klapprott's criminal trials and jail confinement had so preoccupied him and undermined him physically and mentally as to excuse his failure to defend this case initially. The record reveals most substantial foundation for the position that Klapprott knowingly and understandingly paid no attention to the denaturalization proceedings after he had been personally served and during his time to answer or otherwise proceed in the action.

Finally it is asserted that the District Court erred in admitting testimony relating to appellant's prior activities and political views. The background evidence objected to was important to test the credibility of appellant — it had immediate relationship to Klapprott's ability to understand that he had been served in a suit which was to take away his American citizenship and that if he wished to contest the matter it was necessary for him to make an affirmative appearance within sixty days. The political activities evidence gave a weighty

reason for this intelligent appellant not defending, namely, that he could have readily concluded that his past conduct had pretty much eliminated any chance of a successful defense to the charge that he should be deprived of his citizenship. Generally speaking, the objected to testimony was illuminative regarding Klapprott's credibility, his education, training, character and ability, which were the reasons announced by the Court below for permitting it, and which were important in arriving at the basic decision in this case.

A patient, able, experienced judge has found that appellant, after full, fair opportunity, failed to prove the truth of the allegations in his petition. There is substantial evidence in the record to justify the findings.

The judgment of the lower Court will be affirmed.

In the order overruling the petition the date of the filing of the petition is given as January 6, 1947

3 Cir., 166 F.2d 273

335 U.S. 601, 69 S. Ct. 384, 93 L. Ed. 266

336 U.S. 942, 69 S. Ct. 384, 398, 93 L. Ed. 1099

Bechtel v. United States, 9 Cir., 176 F.2d 741, and Fix v. United States, 9 Cir., 176 F.2d 746, involve trials *on the merits* in denaturalization matters where the Government was required to prove its case by clear, unequivocal and convincing evidence. In the instant case the burden was on the defendant-appellant to show good cause why the default judgment should be set aside.

August Klapprott and Federal Rule 60(b)6:

Rule **60**. Relief from a Judgment or Order

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(6) any other reason that justifies relief.

One landmark federal case construing this Federal Rule is ***Klapprott v. United States*****,** 335 U.S. 601, 69 S. Ct. 384, 93 L. Ed. 266 (1949)

In Klapprott, the court had before it an application for the vacation of a default judgment with a prayer for a plenary trial. Klapprott, who had become a naturalized citizen of the United States in 1933, was a defendant in a denaturalization proceeding filed in the United States District Court in 1942. Klapprott was served with notice of said proceeding on May 15, 1942 and failed to answer the complaint within the prescribed 60 days. On June 7, 1942, before the expiration of the said 60 days, Klapprott was arrested and confined in a prison in New York on criminal charges brought by the United States. On July 17, 1942 the Federal District Court of New Jersey, on motion of the United States Attorney, entered a judgment by default against him.

More than four years subsequent to that default judgment and while Klapprott was still a government prisoner, he filed a verified petition in the United States District Court praying for the relief above set forth. The United States District Court 6 F.R.D. 450 denied him the relief sought and was affirmed in this conclusion by the United States Court of Appeals. 3 Cir., 166 F.2d 273. The facts concerning the various legal proceedings taken against Klapprott, his incarceration on charges which the government was unable to sustain, and the condition of his health, are related at length in the opinion of the United States Supreme Court. That court, in granting Klapprott the relief sought, said (335 U.S. 601, 69 S.Ct. at page 390, 93 L.Ed. at page 277):

> *"The basis of his petition was not that he [movant] had neglected to act in his own defense, but that in jail as he was, weakened from illness, without a lawyer in the denaturalization proceedings or funds to hire one, disturbed and fully occupied in efforts to protect *31 himself against the gravest criminal charges, he was no more able to defend himself in the New Jersey court than he would have been had he never received notice of the charges." (emphasis supplied)*
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> *"The undenied allegations already set out show that a citizen was stripped of his citizenship by his Government, without evidence, a hearing, or the benefit of counsel, at a time when his Government was then holding the citizen in jail with no reasonable opportunity for him effectively to defend his right to citizenship. Furthermore, the complaint in the denaturalization proceeding strongly indicates that the Government here is proceeding on inadequate facts, just as it did in the*

criminal cases it brought against petitioner. For if the Government had been able on a trial to prove no more than the particular facts it alleged in its denaturalization complaint, it is doubtful if its proof could have been held sufficient to revoke petitioner's citizenship."

"Petitioner is entitled to a fair trial. He has not had it. The Government makes no claim that he has. Fair hearings are in accord with elemental concepts of justice, and the language of the `other reason' clause of 60 (b) is broad enough to authorize the Court to set aside the default judgment and grant petitioner a fair hearing."